137-615

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1099.

THOMAS A. GREEN, PLAINTIFF IN ERROR,

vs.

SAMUEL H. ELBERT, WILLIAM E. BECK, JOSEPH C. HELM, MERRICK A. ROGERS, LUCIUS P. MARSH, AND J. JAY JOSLIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED JANUARY 13, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 29, 1890.

1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered that heretofore and on, to wit, the 20th day of January, A. D. 1887, came Thomas A. Green in his own proper person and filed in said court his complaint and sued out of said court a writ of summons against Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin.

And afterwards and on, to wit, the 7th day of February, A. D. 1887, came Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, by Lucius P. Marsh, Esq., their attorney, and filed in said court and in said cause their demurrer to the complaint heretofore filed herein.

And afterwards and on, to wit, the 8th day of February, A. D. 1887, came Samuel H. Elbert, William E. Beck, and Joseph C. Helm, by L. S. Dixon, Esq., their attorney, and filed in said court and in said cause their demurrer to the complaint heretofore filed herein.

And afterwards and on, to wit, the 18th day of April, A. D. 1887 came again the said plaintiff in his own proper person and filed in said court and in said cause his amended complaint against the defendants aforesaid; and said amended complaint is in words and figures as follows, to wit:

Amended Complaint.

2 UNITED STATES OF AMERICA:

In the United States Circuit Court for the District of Colorado.

THOMAS A. GREEN, Plaintiff, *vs.* SAMUEL H. ELBERT, WILLIAM E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, Defendants.	Amended Complaint. Action under the Civil Rights Bill. Damages, $50,000.

Plaintiff states that he is now and has been for several years past a member of the bar of the United States circuit and district courts for the district of Colorado and of the Supreme Court of the United States, and a duly licensed attorney and counselor at law and solicitor in chancery in said courts.

That as such attorney and solicitor he did, on or about the 17th day of August, A. D. 1886, prepare and file a bill in equity in the said United States circuit court for the said district of Colorado, wherein Almon P. Newton and Isabel J. Newton were complainants and J. Jay Joslin, Edward F. Lamb, and Uria Lamb, his wife, and The Arapahoe Cattle and Land Company, a corporation organized under the general incorporation laws of the State of Colorado, were defendants, and which said bill in equity is still pending and

undetermined in said court; that the said Almon P. Newton, Isabel J. Newton, and said plaintiff, Thomas A. Green, are all native-born citizens of the United States and were all citizens of the United States at the time of wrongs hereinafter complained of.

That said bill in equity was filed for the purpose, on the part of the said Isabel J. Newton, who was the real party in interest in the same, of recovering back a valuable ranch of 640 acres, in the county of Arapahoe and State of Colorado, and situate near the city of Denver, and which she alleged had been obtained from her by fraud, collusion, conspiracy, and the commission of the crime of false pretenses on the part of said defendants, or to recover the sum of $9,000 as purchase-money of said ranch, and secure a vendor's lien on said ranch for said sum of $9,000.

That some time prior to filing said bill the said Isabel J. Newton, had in her own name and for her own use, commenced an action against the said defendant, J. Jay Joslin, alone in the superior court of the city of Denver, county of Arapahoe and State of Colorado, to recover from said Joslin the said sum of $9,000 as purchase-money aforesaid.

That said action came on for trial before the judge of said superior court, sitting as both a court and jury, to try the same, and that Merrick A. Rogers, judge of said court, after hearing said trial as aforesaid, then and there rendered judgment against the said complainant, Isabel J. Newton, and in favor of the said defendant in said action, J. Jay Joslin.

That in drawing said bill in equity in the said United States circuit court it became and was necessary for the said Isabel J. Newton and her said husband to allege that said Joslin obtained said judgment against her in said superior court by bribery and corruption, and that one Lucius P. Marsh, who acted as attorney for said Joslin in said action, did as such attorney give and that Rogers as such judge did receive a bribe for rendering said corrupt judgment in favor of said Joslin and against the said Isabel J. Newton, in order to prevent said defendants to said bill from interposing said judgment as a bar to said bill in equity in said circuit court.

3 That said charges were material in said bill in equity, and were made in good faith by said Isabel J. Newton and her said husband on information and belief, and that said bill in equity was duly sworn to and verified by said Isabel J. Newton, and that all of said charges were inserted in said bill by plaintiff as her solicitor in good faith, believing then and still believing the same to be true; that there was strong proof of and more than reasonable grounds for making said charges.

That at the time plaintiff filed said bill in equity as the solicitor of the said Isabel J. Newton and her said husband he was also a member of the bar of the State of Colorado and duly licensed by the supreme court of said State of Colorado to practice as an attorney and counselor at law in all the courts of record in said State.

That after said bill in equity had been filed in the said United States circuit court as aforesaid the said Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin unlawfully colluded, confederated, and

conspired together to disbar plaintiff for filing said bill in equity in the faithful discharge of his duty as the solicitor of the said Isabel J. Newton and her said husband, and for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the prosecution of said suit in equity in the said United States circuit court and to prevent the said Isabel J. Newton and her said husband from obtaining their rights and property, and of harassing, oppressing, and injuring plaintiff in his business as an attorney and counselor at law and solicitor in chancery, and for the purpose of wholly preventing the said Isabel J. Newton and her husband from prosecuting said bill in equity and to wholly obstruct the administration of justice in the said United States circuit court in regard to said suit in equity, and that in order to carry out and consummate said conspiracy the said Marsh and Rogers did, on, to wit, the 20th day of November, A. D. 1886, obtain a copy of said bill in equity and simply attach a small petition to the same, in which it was only alleged that said charges in said bill in equity were made maliciously, without alleging that the same was immaterial or alleging any disbarable offense whatever or any offense or contempt of court known to the law of England or America, and asked said supreme court to disbar plaintiff and his associate attorney, H. B. Johnson, for filing said bill in equity in the said United States circuit court, which is a foreign tribunal to the said supreme court of the State of Colorado; and plaintiff states that said supreme court had no more jurisdiction of said false and pretended offense than if said bill had been filed in the court of chancery in England, and plaintiff states that said supreme court of the State of Colorado was wholly and entirely without a shadow of jurisdiction of said false and pretended offense and of the whole subject-matter of said pretended judicial proceeding to disbar plaintiff and his said associate attorney in filing said bill in equity as aforesaid; and plaintiff states that no other offense or pretended offense or cause for disbarment whatever was charged against plaintiff and his said associate solicitor in said petition and disbarment proceeding or by the evidence offered, nor was any other offense pretended except the filing of said bill in equity in the said United States circuit court, which plaintiff states himself and his said associate solicitor did as a matter of duty to their said clients and for the sole purpose of securing the valuable rights of their said clients, as set forth in said bill, and which they were bound to do under their oaths of office as attorneys and solicitors at law and officers of the said United States circuit court.

That if any offense whatever or contempt of court had been committed by plaintiff and his associate solicitor in filing said bill the said United States circuit court had the sole power and exclusive jurisdiction to call plaintiff and his associate solicitor to account for the same, but no offense whatever was committed.

That when plaintiff and his said associate solicitor were called upon to answer in said supreme court to said disbarment proceedings they protested against the power, authority, or jurisdiction of said supreme court substantially in words and figures following, to wit:

"That the said supreme court of Colorado had no power, authority, or jurisdiction whatever to call in question the motives of attorneys and counselors at law in making allegations in a bill in equity in the United States circuit court or any other court when such allegations are material in such suit, and that the same are wholly privileged."

4 "That the law of England and the United States has at all times and everywhere wholly exempted all attorneys and counselors at law from all suits, actions, pains, penalties, and all forfeitures of any property, rights, or privileges of any kind or description whatever, and from all harassments and annoyances of any legal nature whatever on account of any material allegations or charges made in any pleading or in argument in open court in the line of their duties as such attorneys or solicitors; that such immunity and privileges are extended to attorneys and counselors at law as a matter of public policy, so that they may not be intimidated or deterred from an honest, bold, and fearless discharge of their duties in behalf of their clients by any power or authority whatever."

That notwithstanding said protest the said Rogers and Marsh and the said defendant, J. Jay Joslin, who did not join in said petition for said disbarment, but who conspired, confederated, and colluded with said Rogers and Marsh for the unlawful purposes aforesaid, and who aided, abetted, and assisted said Rogers and Marsh in carrying out the same, still persisted in urging the disbarment of plaintiff as aforesaid in said Supreme Court, well knowing that said court had no jurisdiction, power, or authority in law to harass, oppress, wrong, and injure plaintiff and his said associate solicitor by disbarment as aforesaid for simply filing said bill in equity in the upright and faithful discharge of their duties as such solicitors, and that said Rogers, Marsh, and Joslin did then and there appear in said supreme court as prosecutors and witnesses, and did unlawfully, knowingly, and maliciously, and with the intent and for the unlawful purposes aforesaid, urge said pretended court to disbar plaintiff and his said associate solicitor as a matter of punishment for filing said bill in equity and to inflict great injury and loss of their profession on plaintiff and his said associate for filing said bill in the said United States circuit court, and for the purpose of hindering, delaying, and preventing said bill and said suit in equity from being prosecuted, and for the unlawful purpose of obstructing the administration of justice in the said United States circuit court as aforesaid, in direct violation of chapter 24 of "the civil rights bill" and act of Congress, sections 1979 and 1980 of said civil rights bill, Revised Statutes of the United States, 2d edition, pp. 347 and 348, which last section provides "that if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws or to injure him or his property for lawfully enforcing or attempting to enforce the rights of any person or class of persons to the equal protection of the laws," etc.

Plaintiff further states that the said judges of the said supreme

court of Colorado, which said court was and is a foreign jurisdiction and tribunal to the said United States circuit court, in which said bill in equity was filed as aforesaid, without having a shadow of power, authority, or jurisdiction over the false and pretended offense or subject-matter specified in said petition for disbarment and against the earnest protest of plaintiff and his associate solicitor, as set forth above in their answer to said petition for disbarment, and against their protests in open court on the hearing of said debarment matter, knowingly, unlawfully, wrongfully, fraudulently, and maliciously assumed and usurped pretended judicial power and authority and jurisdiction to hear and determine said disbarment matter as the supreme court of said State, and thereupon in the unlawful, wrongful, and most oppressive and tyrannical manner, and pretending to act and decide as the legitimate supreme court of said State, did, without a shadow of jurisdiction or legal authority and with a corrupt partiality in favor of said Rogers, Marsh, and Joslin, and with malice and a corrupt partiality against plaintiff and his associate solicitor and against the said Isabel J. Newton and her husband, and with the intention and for the purpose of aiding, abetting, and assisting the said Rogers, Marsh, and Joslin in carrying out their said conspiracy and unlawful purposes as aforesaid, and in gross violation of every principle of law and justice, and without plaintiff and his said associate having committed or even being charged with any misdemeanor, crime, or malconduct in their offices of attorneys and counselors at law or any offense known to the law of either England or America or any other portion of the civilized world, proceeded, while falsely pretending to act as such supreme court, to enter a judgment of disbarment against plaintiff and his said associate solicitor, and adjudged that the names of plaintiff and the said H. B. Johnson, his associate, be at once stricken from the roll of attorneys and counselors at law of said State of Colorado, and that they be thereafter wholly prohibited from practicing their profession in the courts of said State; and plaintiff states that said judgment of disbarment is still standing unreserved and in full force, the same as a good and valid judgment would be in so far as its operation is concerned in said State, and that no appeal, writ of error, or mandamus can under the laws of said State be made available in behalf of plaintiff and his said associate, and that said judgment is final and wholly without any legal or equitable remedy in said State; that said supreme court is the court of last resort in said State, and that all of its judgments and decrees are final and conclusive in said State.

That said defendants, Samuel H. Elbert, William E. Beck, and Joseph Helm, judges of said supreme court, unlawfully, knowingly, fraudulently, and wrongfully usurped said pretended judicial power and authority for the purpose and with the intent of aiding, abetting, and assisting said defendants, Rogers, Marsh, and Joslin, in carrying out and consummating their said unlawful conspiracy aforesaid, and in direct violation of section 1981 of chapter 24 of the civil rights bill, page 348 of said United States Statutes, which provides: "That every person who, having knowledge of any of the wrongs

conspired to be done and mentioned in the preceding action, 1980, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured or his legal representatives for all damages caused by such wrongful act which said person by reasonable diligence could have prevented, and such damages may be recovered by an action on the case, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in such action," etc.

Plaintiff also states that said judges of said supreme court colluded, confederated, and conspired with said Rogers, Marsh, and Joslin to carry out and consummate said unlawful original conspiracy as aforesaid.

Plaintiff states that said unlawful disbarment of himself and his associate solicitor was made with the intention and for the purposes on the part of all of said defendants of preventing the said Isabel J. Newton and her said husband and their said solicitors from having the equal protection of the laws in either the said United States circuit court or in any State court in said State; that said disbarment of her said solicitors even prevented her and her said husband from dismissing said suit in the said United States circuit court and recommencing it in a State court, as her said solicitors could not appear at all in any State court, and no other attorneys or counselors at law could appear for her and her said husband without subjecting themselves to the pains and penalties of disbarment and the loss of their profession, nor could any other attorneys of said State appear in said suit in the United States circuit court to prosecute said bill in equity without defiance of the opinion of said supreme court and said judgment of disbarment, nor without subjecting themselves to the pains and penalties of disbarment and the loss of their own profession, and in case the plaintiff and his said associate should not go on with the same under the severe penalty of disbarment already inflicted, and destroy all hope of ever being restored to the bar of said State, which can only be done under the laws of
6 said State at the discretion of said supreme court, then the said Isabel J. Newton and her said husband would be wholly and entirely helpless and absolutely deprived of all protection under the laws in said State of Colorado, either in the State or the United States courts in said State; and plaintiff states that said defendants have deprived him of his said profession in the State of Colorado and inflicted the great wrong and injustice upon him aforesaid in gross violation of the said provisions of said "civil rights bill," and plaintiff states that said judges of said supreme court cannot, even when they have jurisdiction of the subject-matter of a suit, act in violation of the acts of Congress, and cannot willfully, maliciously, and with impunity violate the paramount laws of the land.

Plaintiff further states that section 5407, chapter 4, Revised Statutes of the United States, p. 1047, in support of said sections of the "civil rights bill," and a part of the said sections 1979, 1980, on which this action is brought, are in words and figures as follows, to wit:

"If two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law or injure him or his property for lawfully enforcing or attempting to enforce the right of any person or class of persons to the equal protection of the laws, each of such persons shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment."

Plaintiff states that the above provision is in support of said sections of the civil rights bill above referred to and makes a criminal as well as a civil liability for the violation of the same.

Plaintiff further states that on the hearing of said disbarment proceedings before said supreme court both himself and his said associate attorney urged upon said court that in case they should disbar them that it would wholly obstruct the administration of justice in the said equity suit in the said United States circuit court in so far as the said Isabel J. Newton and her said husband were concerned, and leave them in a helpless and remediless condition as to the same, and wholly deprive them of their rights in said court, and that the same would work great wrong, injury, and oppression as to the said Isabel J. Newton and her said husband and their solicitors, and that plaintiff and his said associate solicitor earnestly urged upon the said judges of said court the necessity at least of deferring said disbarment proceedings until after said suit should be heard and disposed of in the said United States circuit court, but that said judges of said supreme court, at the request of said Rogers, Marsh, and Joslin, wholly defied all of the protests of plaintiff and his said associate attorney, and with a corrupt partiality toward said Rogers, Marsh, and Joslin, and with the intention and for the unlawful purpose of hindering, obstructing, and defeating a full, complete, and impartial hearing and trial of said suit in equity in the said United States circuit court, and for the further purpose of preventing an exposure of the said crimes and corruption charged against said Rogers as judge of said superior court and against said Marsh and Joslin for bribing and corrupting said Rogers as judge of said superior court, did render the said corrupt judgment of disbarment; and the said judges of said supreme court proceeded to disbar plaintiff and his said associate as aforesaid, and falsely pretended to be acting as the supreme court of Colorado when they well knew that they had no shadow of jurisdiction of the false and pretended offense charged against plaintiff and his associate solicitor in said bill, and well knowing that no disbarable offense or any offense of any kind whatever was charged against plaintiff and his said associate ever known to the law anywhere or at any time, and well knowing that all of said charges in said bill in equity were material to the same and were all privileged on the part of plaintiff and his said associate solicitor as the solicitors for the said complainants in said bill, and that said judges well knew at that time that

they were directly violating the above sections 1979, 1980, 1981, and 5407 of the statutes of the United States as aforesaid, and that the acts of Congress are the paramount laws of the land and cannot be violated with impunity in that manner.

7 That all of said unlawful, malicious, oppressive, corrupt, and tyrannical acts above mentioned have been done and performed since the filing of said bill in equity and since the said United States circuit court assumed full and complete jurisdiction over the same and since the defendants in said suit filed all of their answers and took issue on all of the said charges in said bill as being material allegations in the same, and since said suit has been standing in said circuit court, with the issues all made up and ready for final hearing or trial.

That the complainants in said bill have been urging the same to final hearing; but the said defendant, J. Jay Joslin, who is also a defendant in said bill and the principal party in interest in the same, and who has the full control and management of the same for all of said defendants, has, in pursuance of said conspiracy, been doing everything in his power to delay the hearing and trial of the same, and did succeed in delaying the same until himself and his said co-conspirators had obtained said judgment of disbarment against plaintiff and his said associate solicitor for the purpose and with the intention of hindering, obstructing, and defeating the further prosecution of said suit in the said United States circuit court by harassing, oppressing, punishing, intimidating, and deterring plaintiff and his said associate solicitor from acting further as the solicitors of complainants in the same, and for the purpose of intimidating and preventing any other attorneys and counselors at law in the State of Colorado from undertaking the prosecution of said suit under the pain and penalties of disbarment and the loss of their profession in the said State of Colorado; and plaintiff states that the said judges of said supreme court were fully advised and informed of such acts, purposes, and intentions on the part of said Joslin, Rogers, and Marsh before and at the time said judges entered said judgment of disbarment; and plaintiff charges that said judges, unlawfully, wrongfully, maliciously, and with the intention and for the purpose of aiding, abetting, and assisting said Rogers, Marsh, and Joslin in their said unlawful conspiracy and purposes aforesaid, maliciously and wrongfully and without jurisdiction or authority and in great haste, to prevent said trial, entered said judgment of disbarment as aforesaid.

That said defendants Elbert, Beck, and Helm had full knowledge of the said unlawful conspiracy and collusion and wrongful and unlawful purposes and intentions of said defendants Rogers, Marsh, and Joslin long before entering said judgment of disbarment against plaintiff and his associate solicitor and could have wholly prevented the same and have refused to enter said judgment of disbarment, and could have prevented said conspirators, Rogers, Marsh, and Joslin, from carrying out all of their said unlawful and wrongful purposes, but wholly neglected and refused to do so as aforesaid and in violation of the statute in such case made and provided.

Plaintiff states that his profession as an attorney and counselor at law is now and has been for several years past worth to him the sum of $25,000 per year at least, and afforded him an income of not less than $25,000 per year, and was growing more and more valuable every year, and that his said law business was rapidly increasing from year to year in said State of Colorado and in the courts of record of said State before the entering of said unlawful judgment of disbarment as aforesaid, and that the entering of said judgment has wholly ruined and broken up plaintiff's law business and practice in the courts of said State, and that said judges of said supreme court, at the time they entered said judgment of disbarment, wrote out and read and published to a large number of persons, to wit, two hundred, in the supreme court room of said State, in the city of Denver, a false, malicious, and libelous opinion, in which all facts offered in evidence were wilfully and maliciously perverted, distorted, and misrepresented, and deliberate falsehoods were stated by said judges in said published opinion as a mere pretense and excuse for said unlawful disbarment, and falsely asserted and declared that said plaintiff and his said associate solicitor had acted with malice in filing said bill in equity, and falsely pretended that the same constituted a good and valid reason in law for the disbarment of plaintiff and his said associate solicitor, when in fact, if said false assertion had been true, it would have constituted no disbarable offense or any offense at all known to the law, as above stated; and plaintiff states that all of the said false and malicious statements and distortions and misrepresentations of the evidence and deliberate falsehoods contained in said pretended judicial
8 opinion were published to the world through the newspapers and by the telegraph as good and sufficient reason in law for disbarment of plaintiff and his said associate, whereby plaintiff has been greatly damaged in his good name and character as an attorney and counselor at law and whereby the great injury, wrong, and damage done him by said unlawful and malicious disbarment has been greatly aggravated, and which plaintiff alleges as an aggravation of damages in this suit; and plaintiff states that even if all of the deliberate falsehoods and all of the false, distorted, and malicious matter stated in said false and malicious and pretended judicial opinion were true, still no disbarable offense or any other offense or shadow of a legal offense of any kind known to the law is contained in said malicious and pretended judicial opinion; but plaintiff states that as the same was given under a pretended judicial sanction it was well calculated to deceive the people and to do plaintiff a great and irreparable wrong and injury.

Plaintiff therefore states that he has been damaged by defendants as aforesaid in the sum of $50,000, and he asks judgment against said defendants for the said sum of $50,000 and costs of suit.

(Signed) T. A. GREEN, *Per Se.*

(Endorsed:) 2094. Circuit court U. S. Thomas A. Green *v.* Samuel H. Elbert *et al.* Amended complaint. Filed Apr. 18, 1887. (Signed) Edward F. Bishop, clerk. T. A. Green, *per se.*

9 And afterwards and on, to wit, the 19th day of April, A. D. 1887, came Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, by their attorney aforesaid, and filed in said court and in said cause their demurrer to the amended complaint heretofore filed herein; and said demurrer is in words and figures as follows, to wit:

Demurrer of Rogers, Marsh, and Joslin.

In the Circuit Court of the United States within and for the District of Colorado.

THOMAS A. GREEN, Plaintiff,
vs.
SAMUEL H. ELBERT *et al.*, Defendants.

Now come the defendants Merrick A. Rogers, J. Jay Joslin, and Lucius P. Marsh, defendants in the above-entitled action, and demur to the amended complaint herein filed against them, and for grounds of such demurrer show here to the court the following:

1. It appears in and by said amended complaint that this court has no jurisdiction of the person of either of these defendants.

2. It appears in and by said amended complaint that this court has not jurisdiction of the subject of the action.

3. Said amended complaint does not state facts sufficient to constitute a cause of action.

4. Said amended complaint is ambiguous, unintelligible, and uncertain, in this:

10 1. It does not appear in said amended complaint what was alleged in the petition of said Rogers & Marsh filed in said supreme court to obtain the disbarment of said Green and Johnson.

2. It does not appear in said amended complaint that said supreme court had not jurisdiction of the subject-matter, nor that said supreme court did not rightfully and legally disbar said Green & Johnson.

3. It does not appear with any certainty what acts or conduct of these defendants or either of them plaintiff relies upon as ground of his recovery.

4. It does not appear what are the charges or allegations in the bill in chancery alleged in said amended complaint.

(Signed) LUCIUS P. MARSH,
For Himself and as Att'y for
Merrick A. Rogers and J. Jay Joslin.

(Endorsed:) 2094. In the circuit court U. S. Thomas A. Green *vs.* Samuel H. Elbert *et al.* Demurrer of Merrick A. Rogers, J. Jay Joslin, and Lucius P. Marsh to amended complaint. Filed Apr. 19, 1887. (Signed) Edward F. Bishop, clerk. Lucius P. Marsh.

And afterwards and on, to wit, the 10th day of May, A. D. 1887, came Samuel H. Elbert, William E. Beck, and Joseph C. Helm, by L. S. Dixon, Esq., their attorney, and filed in said court and in said

cause their demurrer to the amended complaint heretofore
11 filed herein; and said demurrer is in words and figures as follows, to wit:

Demurrer of Elbert, Beck, and Helm.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States for the District of Colorado.

THOMAS A. GREEN, Plaintiff, *vs.* SAMUEL H. ELBERT, WILLIAM E. BECK, & Joseph C. Helm, Impleaded, &c., Defendants.	Demurrer to Amended Complaint.

And now come the defendants, Samuel H. Elbert, William H. Beck, and Joseph C. Helm by L. S. Dixon, their attorney, and demur to the amended complaint of the plaintiff herein, and for grounds of demurrer say:

1st. That the court has no jurisdiction of the persons of these defendants.

2nd. That several causes of action have been improperly united.

3rd. That the amended complaint does not state facts sufficient to constitute a cause of action.

4th. That the said amended complaint is ambiguous, unintelligible, and uncertain.

(Signed) L. S. DIXON,
Defendants' Attorney, Denver, Colo.

12 (Endorsed:) No. 2094. United States circuit court, district of Colorado. Thomas A. Green, plaintiff, *vs.* Samuel H. Elbert, William E. Beck, & Joseph C. Helm, impleaded, &c., defendants. Demurrer to amended complaint by Elbert *et al.* Filed May 10, 1887. (Signed) Edward F. Bishop, clerk. L. S. Dixon, defendants' attorney.

And afterwards and on, to wit, the 22nd day of June, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Hearing Continued.

THOMAS A. GREEN
vs.
SAMUEL H. ELBERT, WILLIAM E. BECK, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin. } 2094. Action for Damages.

At this day comes the said plaintiff in his own proper person, and the said defendants, Samuel H. Elbert, William E. Beck, and Joseph C. Helm, by L. S. Dixon, Esq., their attorney, and the said defendants, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, by L. P. Marsh, Esq., their attorney, also come.

And the demurrers of the said defendants to the amended complaint herein coming on now to be heard, *and* the hearing is
13 continued to the hour of adjournment.

And afterwards and on, to wit, the 23rd day of June, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Taken under Advisement.

THOMAS A. GREEN
vs.
SAMUEL H. ELBERT *et al.* } 2094. Action for Damages.

At this day come again the said parties, by their attorneys, respectively.

And the court, having heard the arguments of counsel upon the demurrer to the amended complaint herein, doth take the same under advisement.

And afterwards and on, to wit, the 27th day of July, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Demurrer to Amended Complaint Sustained.

14 THOMAS A. GREEN
vs.
SAMUEL H. ELBERT *et al.* } 2094. Action for Damages.

At this day comes the said plaintiff in his own proper person, and the said defendants, Samuel H. Elbert, William E. Beck, and Joseph C. Helm, by L. S. Dixon, Esq., their attorney, and the said defend-

ants, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, by L. P. Marsh, Esq., their attorney, also come.

And the demurrers of the said defendants to the amended complaint having heretofore come on to be heard and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said amended complaint is not sufficient in law, and so the said demurrers are and each thereof is sustained.

And thereupon and on the same day, to wit, the 27th day of July, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Judgment.

THOMAS A. GREEN *vs.* SAMUEL H. ELBERT, WILLIAM E. BECK, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin.	2094.	Action for Damages.

15 At this day it is considered by the court that the said defendants go hence hereof without day and have and recover of and from the said plaintiff their costs by them in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 3rd day of October, A. D. 1887, came the plaintiff in his own proper person and filed in said court and in said cause a certain stipulation; and said stipulation is in words and figures as follows, to wit:

Stipulation.

UNITED STATES OF AMERICA:

In the Supreme Court of the United States. October Term, A. D. 1887.

Error to U. S. circuit court for the district of Colorado.

THOMAS A. GREEN *v.* SAMUEL H. ELBERT, WM. E. BECK, JOSEPH C. HELM, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin.	Stipulation.

It is hereby stipulated that the plaintiff in error in the above-entitled cause may file the record in the same in the U. S. Supreme Court and have said cause docketed at any time during the said Oct. term, 1887, of said court.

(Signed) L. S. DIXON,
Attorney for Defendants Elbert, Beck, & Helm.

16 (Endorsed:) 2094. Thomas A. Green *v.* Samuel H. Elbert *et al.* Stipulation as to filing record in Supreme Court during Oct. term, 1887. Filed Oct. 3, 1887. (Signed) William A. Willard, clerk. T. A. Green, att'y for plaintiff in error.

And thereupon and on the same day, to wit, the 3rd day of October, A. D. 1887, came again the said plaintiff in his own proper person and filed in said court and in said cause his bond, and sued out of said court a writ of error and citation to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

Bond.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that Thomas A. Green, as principal, and Albert S. Whitaker, as surety, are held and firmly bound unto Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin in the full and just sum of three hundred (300) dollars, to be paid to the said Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

17 Sealed with our seals and dated this 17th day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at the May term, A. D. 1887, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between Thomas A. Green, plaintiff, and Samuel H. Elbert, Joseph C. Helm, William E. Beck, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, defendants, judgment was rendered against the said Thomas A. Green for $—, costs of suit, and the said Thomas A. Green having obtained a writ of error to reverse the judgment of said court, and a citation directed to the said Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, citing and admonishing them to be and appear at a term of the United States Supreme Court to be held at the Capitol on the 10th day of October next:

Now, the condition of the above obligation is such that if the said Thomas A. Green shall prosecute said writ of error with effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed) THOMAS A. GREEN. [SEAL.]
A. S. WHITAKER. [SEAL.]

Approved.
(Signed) MOSES HALLETT, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

18 A. S. Whitaker, surety on the within bond, being first duly sworn, deposes and saith that he is worth in real estate and goods & chattels the sum of one thousand (1,000) dollars over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(Signed) A. S. WHITAKER.

Subscribed and sworn to before me, at Denver, this 31st day of August, A. D. 1887.

[Seal Dist. C't U. S., Dist. of Colo.]

(Signed) WILLIAM A. WILLARD,
Clerk Dist. Court U. S.,
By F. W. TUPPER, *Deputy Clerk.*

(Endorsed:) Gen. No., 2094. Circuit court of the United States, district of Colorado. Thomas A. Green *vs.* Samuel H. Elbert *et al.* Bond upon writ of error—$300.00. Filed this 3d day of Oct., A. D. 1887. (Signed) Wm. A. Willard, clerk, by F. W. Tupper, deputy clerk.

And the said writ of error, with the return of the clerk thereto, is next hereto attached, to wit:

Writ of Error.

19 Writ of error to circuit court U. S., district of Colorado.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States to the judge of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between Thomas A. Green and Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, a manifest error hath happened, to the great damage of the said Thomas A. Green, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning

the same, to the Supreme Court of the United States, holden at the Capitol of the U. S., together with this writ, so that you have the same at the Capitol on the 10th day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 3rd day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 112th year.

Seal United States Circuit Court, District of Colorado.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Allowed by—
MOSES HALLETT, *Judge*.

[Endorsed:] Gen. No. 2094. Circuit court of the United States. Thomas A. Green, plaintiff in error, *vs.* Samuel H. Elbert *et al.* Writ of error to circuit court U. S., district of Colorado. Filed in circuit court of the U. S. this 3rd day of April, A. D. 1887. William A. Willard, clerk, by F. W. Tupper, deputy clerk. T. A. Green, attorney for plaintiff in error. Filed Oct. 3, 1887. William A. Willard, clerk.

Return.

THE UNITED STATES OF AMERICA, *District of Colorado*, } *ss*:

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States, at Washington, D. C., a duly certified transcript of a portion of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this fifth day of May, A. D. 1888.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

20 And the said citation is next hereto attached, to wit:

Citation.

21 Citation, U. S. circuit court.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Samuel E. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court, to be holden at the city of Washington, D. C., on the 10th day of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Thomas A. Green is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 19th day of September, in the year of our Lord one thousand eight hundred and eighty-seven.

MOSES HALLETT, *Judge.*

[Endorsed:] Gen. No., 2094. Circuit court of the United States, district of Colorado. Thomas A. Green, plaintiff in error, *vs.* Samuel H. Elbert *et al.*, defendants in error. Citation. Filed in circuit court of the U. S. this 3rd day of October, A. D. 1887. William A. Willard, clerk, by F. W. Tupper, deputy clerk. T. A. Green, attorney for plaintiff in error. Filed Oct. 3, 1887. William A. Willard, clerk.

Proof of Service.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

On this — day of ——, A. D. 18—, personally appeared —— —— before me, the subscriber, a clerk of the — court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed before me this — day of ——, A. D. 18—.

—— ——, *Clerk,*
By —— ——, *Deputy Clerk.*

I hereby confess services of the within citation this 23 day of September, A. D. 1887.

L. S. DIXON,
Att'y for Defendants Elbert, Beck, and Helm.
LUCIUS P. MARSH,
For Himself and as Att'y for Rogers & Joslin.

22 And afterwards and on, to wit, the 20th day of April, A. D. 1888, came said plaintiff in his own proper person and filed in said court and in said cause his præcipe for a copy of the record; and said præcipe is in words and figures as follows, to wit:

23 In the United States Circuit Court for the District of Colorado.

THOMAS A. GREEN, Plaintiff,
v.
WILLIAM E. BECK and Others.

Order for Copy of Record.

Mr. CLERK: Please make a certified copy of the amended complaint, the demurrer to the amended complaint, and a copy of docket entries and final judgment, and also a copy of the stipulation entered into by Judge Dixon, attorney for defendants, and myself as to time of taking up said record to the Supreme Court of the United States.

Please make up said record in the usual manner as to citation, writ of error, and bond, and prepare and certify said record in the proper manner for the Supreme Court of the U. S.

(Signed) T. A. GREEN, *Per Se.*

(Endorsed:) 2094. Thomas A. Green *v.* William E. Beck *et al.* Order for copy of record. Filed Apr. 20, 1888. (Signed) William A. Willard, clerk. T. A. Green, *per se.*

24 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the amended complaint, two demurrers, stipulation, bond, præcipe, and all orders of court heretofore had and entered of record in said court and in a certain cause lately in said court pending, wherein Thomas A. Green was plaintiff and Samuel H. Elbert *et al.* were defendants, as fully and completely as the same still remain on file and of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court at Denver, in said district, this fifth day of May, A. D. 1888.

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Endorsed on cover: Colorado C. C. U. S. No. 1099. Thomas A. Green, plaintiff in error, *vs.* Samuel E. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, & J. Jay Joslin. Filed January 13, 1890.

IN THE SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA:

THOMAS A. GREEN, Plaintiff in Error,
vs.
SAMUEL H. ELBERT, WILLIAM E. BECK, JOSEPH C. HELM, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, Defendants in Error. } Affidavit.

THOMAS A. GREEN, of lawful age, being first duly sworn according to law on his oath states that he is the plaintiff in error in the above-entitled suit, and that he is now and has been for many years past a member of the bar of the United States circuit court for the district of Colorado, and also a member of the bar of the Supreme Court of the United States.

That affiant has been attending to the above-entitled suit, both in the said United States circuit court and in the Supreme Court of the United States, in person, as shown by the record of said case.

Affiant further states that on or about the 5th day of May, A. D. 1887, affiant caused a duly certified transcript of the record in said case, together with a writ of error, citation, and bond, to be certified by the clerk of the said United States circuit court for the district of Colorado, to be forwarded to the clerk of the United States Supreme Court, in the city of Washington, in accordance with a stipulation entered into between the said plaintiff in error and the said defendants in error, that said record and writs might all be returned to the clerk of the United States Supreme Court at any time during the October term, A. D. 1887, of the said Supreme Court of the United States.

Affiant further states that, as he now remembers, the said October term, A. D. 1887, of said court extended into and through the said month of May, 1888, and this affiant was informed and believed the said record was all duly certified to by the clerk of the Supreme Court of the United States in the above-entitled suit during the continuance of the October term, 1887, of said court; and affiant further states that if said record was not returned or received by the clerk of the said United States Supreme Court during the said October term, A. D. 1887, of said court that he has been wholly and entirely misinformed as to the time when the said October term, 1887, of the Supreme Court adjourned; and affiant states that at the time he sent or caused said record to be sent he understood and believed that the said October term, 1887, of said Supreme Court was still in session, and that if said court was not in session at the time said transcript and record was returned to the clerk of the said Supreme Court affiant was wholly and entirely mistaken in regard to the continuance of said term of court; and that affiant did not intend to delay the sending of said record and said writs to the clerk

of the said Supreme Court, at the city of Washington; and if there was really any neglect in this regard it was nothing but an unintentional mistake on the part of affiant, and that he did not intend in any manner to neglect or delay sending the said record or causing the same to be sent to the clerk of said Supreme Court until after the adjournment of the said October term, 1887, of said Supreme Court.

Affiant further states, as he now remembers and believes, that he requested the clerk of the said Supreme Court, at the city of Washington, to file said record as soon as the same should reach him; and affiant further states that he has not now any remembrance or recollection of having neglected anything at all on his part which was necessary for him to do in order to have said record filed in the clerk's office of the Supreme Court of the United States as soon as the same reached the said clerk in the city of Washington; and affiant further states that he never intended in any manner whatever to neglect or delay the filing of said record in the clerk's office of the Supreme Court of the United States during the said October term, 1887, of said court; and affiant states now that he did at that time intend to use all due diligence and care in having said record duly filed with the clerk of the said Supreme Court of the United States, in the city of Washington, during the continuance of the said October term, 1887, of said court, and that if anything occurred to cause the delay in the filing of said record this affiant has now no recollection of the same; and affiant further states that he supposed the said record had been duly filed by the clerk of said court as soon as the same reached him, during the month of May, 1888, and affiant has no recollection now that he neglected or refused to do anything at all that was necessary on his part to be done to secure the filing of said record as soon as the same was sent to the clerk of the Supreme Court of the United States.

Affiant further states that he resides at more than two thousand miles from the capital, where said court is held, and that he never has been and is not now familiar with the rules and customs of the clerk of the said Supreme Court, and that affiant has never been and is not now familiar with the manner in which business is transacted by said clerk in his said office, and that if affiant did not comply with all the requirements of said clerk in regard to the filing of said record it was because he did not understand the same; and affiant states that he never has at any time knowingly and intentionally neglected anything whatever pertaining to the sending of said record and the filing of the same or with the prosecution of said suit in the said Supreme Court of the United States; but, on the contrary, affiant states that he has always intended to use all due diligence not only in having said record sent up and filed, as required by law, but also in using due diligence in vigorously prosecuting said suit in the said Supreme Court of the United States, and that affiant has been carefully watching the same for some time past, as he supposed it was approaching within a year or two of the time when the same would be reached on the docket of said court; and affiant further states that he never supposed or thought for a mo-

ment that he was guilty of any neglect whatever in this regard at all until he was served with a copy of the motion to dismiss this suit, about a week or ten days ago; and affiant states that living as he does so far from said court, and being compelled to prepare a brief and argument on said motion to dismiss, that he has had no time or opportunity to investigate the reason why said record was not duly filed as soon as the same was sent to the clerk of the said Supreme Court.

Affiant further states that said motion to dismiss requires him to appear and oppose the same on the 15th day of this month; and affiant further states that it will not be possible for him to confer with the clerk of the Supreme Court of the United States, at the city of Washington, within the few days which still remain before the calling of said motion to dismiss in this honorable court, but affiant further states that whatever may have been the reason why the said clerk of this honorable court failed, neglected, or refused to file said record that affiant has not intentionally in any manner whatever neglected that which he supposed and believed was necessary for him to do in order to have said record filed in the clerk's office of this honorable court, and affiant has no knowledge or information as to why said record was not filed, if such be the case, from early in May, 1887, until the 13th day of January, 1890, and affiant states that if the said clerk had any good reason for not filing said record or affiant neglected anything that was necessary for him to do in order to secure the filing of said record that any such neglect was wholly and entirely a mistake and a matter of ignorance on the part of affiant in regard to the business in the office of the clerk of this honorable court, and that no intentional neglect or delay has ever been made by affiant touching said matter, and that affiant does not believe that he is in any manner to blame for any delay whatever which has been caused in the filing of said record.

Affiant further states that, as shown by the printed record in said case, the said defendants in error never made any effort whatever to have said case dismissed until nearly one year after said record had been duly filed in the clerk's office of this court, as shown by said printed record, and that said defendants in error did not during the time said record remained unfiled in said office, if there ever was any such time, make any effort whatever to have the above-entitled cause dismissed for the reason that the same was not properly filed in said office.

And affiant further states that for some time past and for at least one year past affiant has been watching said case with great care and diligence, and that just before he received said notice of motion to dismiss he had forwarded on to said clerk of said court, at Washington city, a full and complete assignment of errors in said cause, and had the same filed in said office, and that at the time he received notice of the said motion to dismiss he had said cause all prepared, so far as he was concerned and as far as he could prepare the same, and was awaiting the usual time when the record in said case should be printed and he could file his brief and argument and be ready to

submit said cause so soon as the same should be reached upon the docket of said court.

Affiant further states that he has at several different times, ever since said record was sent to the clerk of the said Supreme Court, attempted to get the attorney in the city of Denver for the said defendants in error to agree to submit said cause under rule 20 of said Supreme Court; but affiant states that said attorney informed him that said defendants in error would not consent to anything of the kind or agree to anything whatever that would speed the final hearing of said cause; and affiant therefore states that he was watching said cause with all the care and diligence he could, residing at such a distance from the place where said court was held and being so unfamiliar with the manner in which the clerk of said Supreme Court transacted his official business in his said office touching said matters.

Affiant further states that he supposed it was a matter of course, upon the return of the writ of error to the Supreme Court of the United States from a circuit court of the United States, that the clerk of the said Supreme Court would immediately on such return of such writ and a transcript of the record, together with the necessary citation and bond, all regularly prepared, at once docket said cause without further delay or without anything more to be done on the part of affiant. Affiant does not now remember whether or not he sent to said clerk a docket fee, and affiant states that he may not at that time have known — regard it as absolutely necessary to do so before a record on the return of the writ of error would be filed in said office; but affiant states that according to the best of his remembrance that he has sent the said clerk the said docket fee, and that he sent the same just so soon as he knew the amount thereof and the said clerk demanded the same; and affiant further states that if there was any delay whatever in this regard, it was not at all intentional on his part and was a mere matter of mistake; and affiant further states that he does not now remember that there was any delay or any mistake made by him in sending said docket fee.

Affiant further states that he did not then understand that the clerk of the said Supreme Court required that a formal and written appearance should be entered in said office by the attorney for the plaintiff in error before the return of the writ of error and record connected with the same would be filed in said office; and affiant further states that if he neglected anything of this kind it was wholly and entirely a mistake on his part and because he may have thought that inasmuch as he appeared in person in said cause and as it was shown by and through the record that he had appeared in person in the court below, that the said clerk of said Supreme Court would distinctly understand that affiant intended to appear in person in said cause in the said Supreme Court, and, if there was any mistake in this regard, affiant did not intend to hinder or delay the prosecution of said suit in the said Supreme Court in any manner whatever, and that the same was wholly and absolutely a mistake on his part and not a matter of intentional neglect or delay in hav-

ing said record duly filed in the office of the clerk of this honorable court.

Affiant further states that it requires from four to five days for mail or express matter to pass from the city of Denver to the city of Washington, and the same time to come from the city of Washington to the city of Denver, and that in the short time given affiant since the service of said motion to dismiss it has been utterly impossible for affiant, who has been heavily pressed with legal business at home, to investigate the facts in regard to the filing of said record in the clerk's office of this honorable court, and that affiant cannot well do so in less than one month's time and when he has an opportunity to attend to the same, and certainly not in less than three weeks' time, considering the necessary time for letters to pass to and from the said city of Washington; and affiant therefore states that if this affidavit is not a satisfactory and sufficient answer to said motion to dismiss, for this reason, that affiant asks this honorable court to grant him a reasonable time to investigate this matter and ascertain the exact facts touching the same.

Affiant further states that, as shown by the printed record, this motion to dismiss was not filed by defendants in error until almost one entire year after said case was docketed for the October term, A. D. 1889; and affiant states that as he understands the decisions of this honorable court touching such matters, that it is entirely too late to interpose such a motion to dismiss after said case has been docketed for one year; and affiant understands that the case of—

Bingham *vs.* Morris, 7th Cranch, page 99,

and the case of—

Pickett's Heirs *vs.* Legerwood, 7th Peters, pages 444–446;
Owings *vs.* Tierman, 10th Peters, page 10;
Given *vs.* Breedlow, 15th Peters, page 284;
Fitzsimmons *vs.* Insurance Company, 4th Cranch, page 180,

and several other decisions of this high court, all establish the doctrine beyond a doubt, that where a motion of this kind to dismiss is not made until after the case has been duly docketed and is standing regularly upon the docket, to be heard in its regular order, that no such motion as this can be entertained.

Affiant further states that under the stipulation entered into in regard to the filing of said record in the clerk's office, that he understands that said record could be filed up until the very last moment of the October term, 1887; and affiant further supposes that the earliest term for which said case could have been docketed would have been the October term, 1888; but affiant does not understand why said case was not docketed for the said October term, 1888, and has no information at all in regard to why the clerk of this honorable court did not docket said case for the said October term, 1888, instead of for the October term, 1889, as affiant understands or supposes from the printed record that said case was docketed for the October term, 1889, and that the motion to dismiss was not made or filed until about two weeks ago.

Affiant further states that he has prepared and sent to the clerk of this court full and elaborate printed briefs on both the merits of this case and also upon the motion to dismiss, and affiant asks this honorable court to examine said briefs carefully before passing upon the motion to dismiss, inasmuch as said motion to dismiss seeks to bring before this honorable court the entire merits of this action, as well as the question in regard to the time of filing and docketing said case.

Wherefore affiant states that if said cause really has been delayed because the same was not filed by the clerk in the time as required by the rules of this court, that affiant was wholly and absolutely ignorant of the same, as he now remembers, up until the time he was served with a copy and notice of the motion to dismiss said cause, about one week or ten days ago, and that affiant has not had sufficient time since the service of said notice, and considering the great distance he resides from the place of holding said Supreme Court, to investigate the cause or reason, if any existed, why said record was not filed in that time, if such was the case, as said motion does not state anything at all to explain why said record was not filed in that time, but simply states that the filing mark upon said record shows that the same was filed in the clerk's office on the 13th day of January, 1890.

Affiant further states that he has made this affidavit wholly from his remembrance of what he has done and intended to do touching the filing of said record and from what he understands or did not understand in regard to such matters in the office of the clerk of the said Supreme Court, and if anything in this affidavit should turn out not to be wholly correct it is because affiant has not now and does not remember having had any information or knowledge to the contrary of what he has stated above in this affidavit.

Wherefore affiant asks the said motion to dismiss the above-entitled cause for the reason that the record of the same was not filed in the clerk's office of this honorable court may be denied, or that affiant may be given a reasonable length of time in which to fully investigate this matter and ascertain from the clerk of this honorable court all of the facts in regard to the time said record was sent up, and what delay, if any, was made in filing the same, and the reasons for such delay.

T. A. GREEN.

Subscribed and sworn to before me this 9th day of December, A. D. 1890.

[Seal U. S. Cir. Ct., District Colorado—Andrew W. Brazee, Commissioner.]

ANDREW W. BRAZEE,
United States Circuit Court Commissioner
for the District of Colorado.

[Endorsed:] U. S. Supreme Court. 1890, Oct. term. No. 1099. Thomas A. Green *vs.* Samuel H. Elbert *et al.* Affidavit of T. A. Green.

[Stamped:] Office Supreme Court U. S. Filed Dec. 13, 1890. James H. McKenney, clerk.

DENVER, COLO., *December 9th*, 1890.

Chief Justice Fuller.

DEAR SIR: I have been notified by an attorney in the city of Washington that he will on Monday, the 15th day of this month, call up a motion to dismiss in the case of Thomas A. Green, plaintiff in error, *vs.* Samuel H. Elbert *et al.*, defendants in error, number 1099.

As I only received notice of this motion about ten days ago, and inasmuch as I live about two thousand miles from Washington city, & have been ever since I received said notice very heavily pressed with other professional business, it will be absolutely impossible for me to appear before your court on Monday, the 15th day of this month, to attend the hearing of said motion; but I have sent copies of my brief and argument to the clerk of your court, which will be used on the general merits of the case, and also upon the motion to dismiss. It is a most remarkable motion, and seeks to determine the whole merits of the case upon the hearing of the motion, which, it seems to me, cannot be done; but still I deemed it safer to prepare a brief and argument upon the whole merits of the case, as well as upon the motion to dismiss.

You will find my brief and argument on the motion to dismiss at the end of my brief and argument upon the merits of the case; and, as I cannot attend myself and have no attorney in Washington city representing me, I shall take it as a very great favor if you will see that my brief and argument and the full and complete affidavit, which I have also sent to the clerk of your court, are presented to your court by the clerk, upon the hearing of said motion. For reasons which will appear upon the examination of the whole case, I have been compelled in a great measure to act as attorney for myself, and the case is one not only of very great importance to me as a member of the Colorado bar, but one of very great importance to all of the members of said bar. I am also a member of the bar of the United States circuit court for the district of Colorado, and a member of the bar of the Supreme Court of the United States; and, as you will see upon an examination of the case, that it is a matter involving the rights and privileges of both the members of the bar and the judges of the supreme court of the State of Colorado.

I cannot attempt an explanation of the case in this letter, but I wish to state that the motion filed by the attorney for the defendants in error makes a very imperfect statement of the case, and in fact does not state the case at all so that it can be understood from the statement contained in said motion; therefore I trust that all of the members of your court will examine the printed record, which is very brief, and also my brief and argument, in which the whole record, so far as pleadings are concerned, is fully stated.

Considering the very brief notice I have had of this motion and the great distance I live from the capital, it has been utterly impossible for me to fully prepare for the hearing of said motion; but I

have stated this matter fully in my affidavit sent to the clerk, which will explain itself, and which may induce your court to continue the hearing of said motion for a reasonable time to enable me to further investigate the facts in regard to the time and manner of filing the record in the clerk's office, which is one of the grounds made in said motion for dismissing the case; but I think you will find from my brief and affidavit that there will be no occasion for any further investigation touching the matter of filing the record and docketing the case.

Yours truly, T. A. GREEN.

[Endorsed:] 1099. T. A. Green to the Chief Justice. '90, Dec. 9.

United States Supreme Court
FILED.
DEC 16 1890
JAMES. H. McKENNEY,
CLERK.

In the Supreme Court

Of the United States.

OCTOBER TERM, A. D. 1889.

THOMAS A. GREEN,
Plaintiff in Error,
vs.
SAMUEL H. ELBERT, et al.,
Defendants in Error.

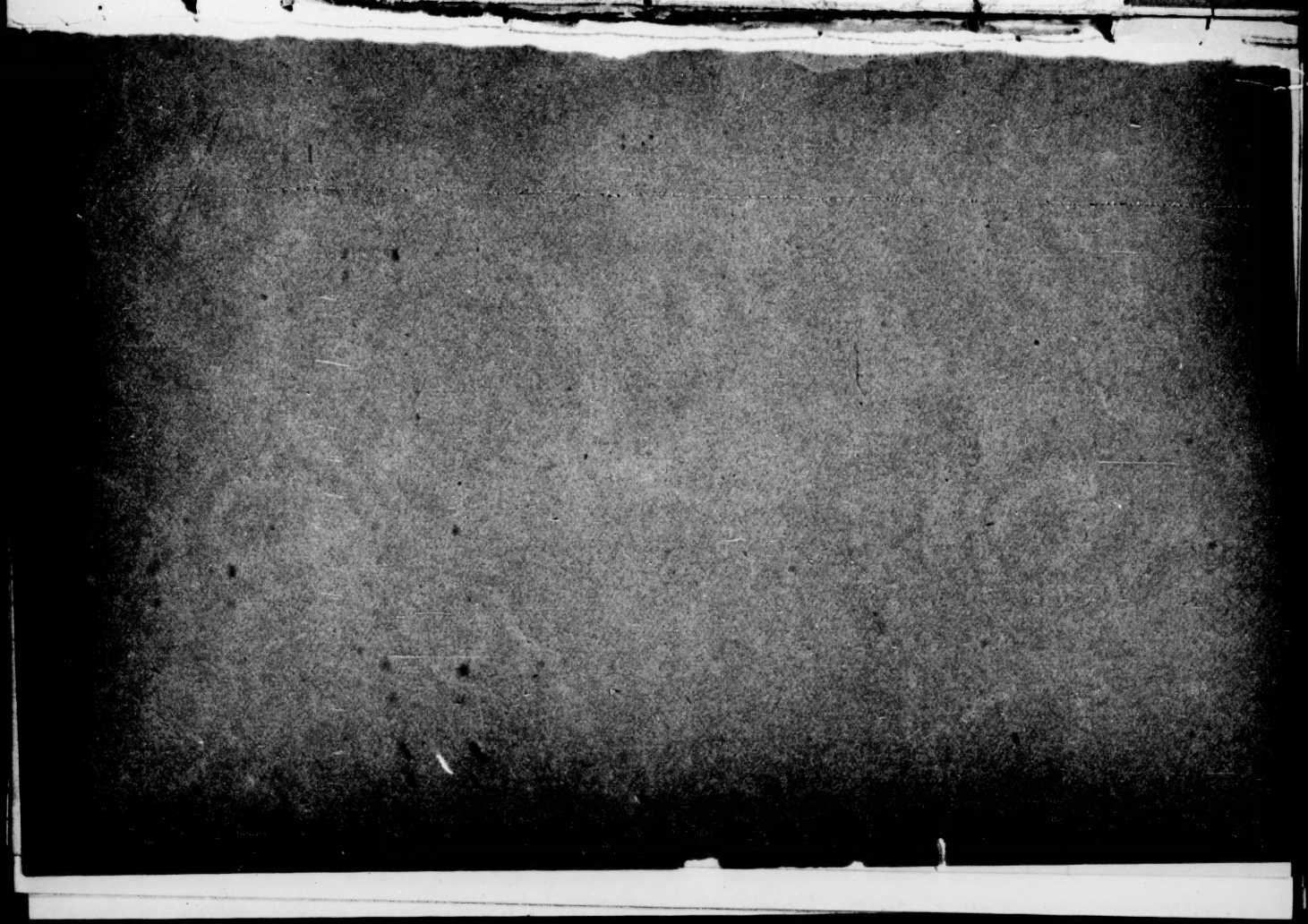
BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

ALSO

REPLY TO BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR ON MOTION TO DISMISS.

T. A. GREEN,
In Propria Persona.

THE SHATTUCK PRINTING CO., 1340-46 LAWRENCE ST., DENVER, COLO.



In the Supreme Court

Of the United States.

OCTOBER TERM, A. D. 1889.

THOMAS A. GREEN,
Plaintiff in Error,
vs.
SAMUEL H. ELBERT, et al.,
Defendants in Error.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

STATEMENT.

The most concise statement that can be made of the case at bar is to copy the amended complaint and the demurrers to the same. The case, in the Court below, was determined on two separate demurrers by different defendants to the amended complaint, which were sustained by the Court below, and the plaintiff brings the case into this Court by writ of error.

I.

Amended Complaint.

Plaintiff states that he is now and has been for several years past a member of the bar of the United States Circuit and District Courts for the district of Colorado and of the Supreme Court of the United States, and a duly licensed attorney and counsellor at law and solicitor in chancery in said courts.

That as such attorney and solicitor he did, on or about the 17th day of August, A. D. 1886, prepare and file a bill in equity in the said United States Circuit Court for the said district of Colorado, wherein Almon P. Newton and Isabel J. Newton were complainants and J. Jay Joslin, Edward E. Lamb, and Uria Lamb, his wife, and The Arapahoe Cattle and Land Company, a corporation organized under the general incorporation laws of the State of Colorado, were defendants, and which said bill in equity is still pending and undetermined in said Court; that the said Almon P. Newton, Isabel J. Newton, and said plaintiff, Thomas A. Green are all native-born citizens of the United States and were all citizens of the United States at the time the wrongs hereinafter complained of.

That said bill in equity was filed for the purpose, on the part of the said Isabel J. Newton, who was the real party in interest in the same, of recovering back a valuable ranch of 640 acres, in the county of Arapahoe and State of Colorado, and situate near the city of Denver, and which she alleged had been obtained from her by fraud, collusion, conspiracy, and the commission of the crime of false pretenses on the part of said defendants, or to recover the sum of $9,000 as purchase-money of said ranch, and secure a vendor's lien on said ranch for said sum of $9,000.

That some time prior to filing said bill the said Isabel J. Newton, had in her own name and for her own use, commenced an action against the said defendant, J. Jay Joslin, alone in the Superior Court of the city of Denver, county of Arapahoe and State of Colorado, to recover from said Joslin the said sum of $9,000 as purchase-money aforesaid.

That said action came on for trial before the judge of said Superior Court, sitting as both a court and jury, to try the same, and that Merrick A. Rogers, judge of said Court, after hearing said trial as aforesaid, then and there rendered judgment against the said complainant, Isabel J. Newton, and in favor of the said defendant in said action, J. Jay Joslin.

That in drawing said bill in equity in the said United States Circuit Court it became and was necessary for the said Isabel J. Newton and her said husband to allege that said Joslin obtained said judgment against her in said Superior Court by bribery and corruption, and that one Lucius P. Marsh, who acted as attorney for said Joslin in said action, did as such attorney give and that Rogers as such judge did receive a bribe for rendering said corrupt judgment in favor of said Joslin and against the said Isabel J. Newton, in order to prevent said defendants to said bill from interposing said judgment as a bar to said bill in equity in said Circuit Court.

That said charges were material in said bill in equity, and were made in good faith by said Isabel J. Newton and her said husband on information and belief, and that said bill in equity was duly sworn to and verified by said Isabel J. Newton, and that all of said charges were inserted in said bill by plaintiff as her solicitor in good faith, believing then and still believing the same to be true; that there was strong proof of, and more than reasonable grounds for making said charges.

That at the time plaintiff filed said bill in equity as the solicitor of the said Isabel J. Newton and her said husband he was also a member of the bar of the State of Colorado and duly licensed by the Supreme Court of said State of Colorado to practice as an attorney and counselor at law in all the Courts of record in said State.

That after said bill in equity had been filed in the said United States Circuit Court as aforesaid the said Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin unlawfully colluded, confederated and conspired together to disbar plaintiff for filing said bill in equity in the faithful discharge of his duty as the solicitor of the said Isabel J. Newton and her said husband, and for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the prosecution of said suit in equity in the said United States Circuit Court and to prevent the said Isabel J. Newton and her said husband from obtaining their rights and property, and of harassing, oppressing, and injuring plaintiff in his business as an attorney and counsellor at law and solicitor in chancery, and for the purpose of wholly preventing the said Isabel J. Newton and her husband from prosecuting said bill in equity and to wholly obstruct the administration of justice in the said United States Circuit Court in regard to said suit in equity, and that in order to carry out and consummate said conspiracy the said Marsh and Rogers did, on, to wit, the 20th day of November, A. D. 1886, obtain a copy of said bill in equity and simply attach a small petition to the same, in which it was only alleged that said charges in said bill in equity were made maliciously, without alleging that the same was immaterial or alleging any disbarable offense whatever or any offense or contempt of Court known to the law of England or America, and asked said Supreme Court to disbar plaintiff and his associate attorney, H. B. Johnson, for filing

said bill in equity in the said United States Circuit Court, which is a foreign tribunal to the said Supreme Court of the State of Colorado; and plaintiff states that said Supreme Court had no more jurisdiction of said false and pretended offense than if said bill had been filed in the Court of Chancery in England, and plaintiff states that said Supreme Court of the State of Colorado was wholly and entirely without a shadow of jurisdiction of said false and pretended offense and of the whole subject-matter of said pretended judicial proceeding to disbar plaintiff and his said associate attorney in filing said bill in equity as aforesaid; and plaintiff states that no other offense or pretended offense or cause for disbarment whatever was charged against plaintiff and his said associate solicitor in said petition and disbarment proceeding or by the evidence offered, nor was any other offense pretended except the filing of said bill in equity in the said United States Circuit Court, which plaintiff states himself and his said associate solicitor did as a matter of duty to their said clients and for the sole purpose of securing the valuable rights of their said clients, as set forth in said bill, and which they were bound to do under their oaths of office as attorneys and solicitors at law and officers of the said United States Circuit Court.

That if any offense whatever or contempt of Court had been committed by plaintiff and his associate solicitor in filing said bill, the said United States Circuit Court had the sole power and exclusive jurisdiction to call plaintiff and his associate solicitor to account for the same, but no offense whatever was committed.

That when plaintiff and his said associate solicitor were called upon to answer in said Supreme Court to said disbarment proceedings they protested against the power, authority or jurisdiction of said Supreme Court substantially in words and figures following, to wit:

"That the said Supreme Court of Colorado had no power, authority, or jurisdiction whatever to call in question the motives of attorneys and counselors at law in making allegations in a bill in equity in the United States Circuit Court or any other Court when such allegations are material in such suit, and that the same are wholly privileged."

"That the law of England and the United States has at all times and everywhere wholly exempted all attorneys and counselors at law from all suits, actions, pains, penalties, and all forfeitures of any property, rights or privileges of any kind or description whatever, and from all harassments and annoyances of any legal nature whatever on account of any material allegations or charges made in any pleading or in argument in open Court in the line of their duties as such attorneys or solicitors; that such immunity and privileges are extended to attorneys and counselors at law as a matter of public policy, so that they may not be intimidated or deterred from an honest, bold and fearless discharge of their duties in behalf of their clients by any power or authority whatever."

That notwithstanding said protest the said Rogers and Marsh and the said defendant, J. Jay Joslin, who did not join in said petition for said disbarment, but who conspired, confederated, and colluded with said Rogers and Marsh for the unlawful purposes aforesaid, and who aided, abetted, and assisted said Rogers and Marsh in carrying out the same, still persisted in urging the disbarment of plaintiff as aforesaid in said Supreme Court, well knowing that said Court had no jurisdiction, power or authority in law to harass, oppress, wrong, and injure plaintiff and his said associate solicitor by disbarment as aforesaid for simply filing said bill in equity in the upright and faithful discharge of their duties as such solicitors,

and that said Rogers, Marsh and Joslin did then and there appear in said Supreme Court as prosecutors and witnesses, and did unlawfully, knowingly, and maliciously, and with the intent and for the unlawful purposes aforesaid, urge said pretended Court to disbar plaintiff and his said associate solicitor as a matter of punishment for filing said bill in equity and to inflict great injury and loss of their profession on plaintiff and his said associate for filing said bill in the said United States Circuit Court and for the purpose of hindering, delaying, and preventing said bill and said suit in equity from being prosecuted, and for the unlawful purpose of obstructing the administration of justice in the said United States Circuit Court as aforesaid, in direct violation of chapter 24 of "the civil rights bill" and act of Congress, sections 1979 and 1980 of said civil rights bill, Revised Statutes of the United States, 2d edition, pp. 347 and 348, which last section provides "that if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating in any manner the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws or to injure him or his property for lawfully enforcing or attempting to enforce the rights of any person or class of persons to the equal protection of the laws," etc.

Plaintiff further states that the said judges of the said Supreme Court of Colorado, which said Court was and is a foreign jurisdiction and tribunal to the said United States Circuit Court, in which said bill in equity was filed as aforesaid, without having a shadow of power, authority or jurisdiction over the false and pretended offense or subject-matter specified in said petition for disbarment, and against the earnest protest of plaintiff and his associate solicitor, as set forth above in their answer to said petition for disbarment, and against their protests in open Court

on the hearing of said debarment matter, knowingly, unlawfully, wrongfully, fraudulently, and maliciously assumed and usurped pretended judicial power and authority and jurisdiction to hear and determine said disbarment matter as the Supreme Court of said State, and thereupon in the unlawful, wrongful, and most oppressive and tyrannical manner, and pretending to act and decide as the legitimate Supreme Court of said State, did, without a shadow of jurisdiction or legal authority and with a corrupt partiality in favor of said Rogers, Marsh, and Joslin, and with malice and a corrupt partiality against plaintiff and his associate solicitor and against the said Isabel J. Newton and her husband, and with the intention and for the purpose of aiding, abetting, and assisting the said Rogers, Marsh, and Joslin in carrying out their said conspiracy and unlawful purposes as aforesaid, and in gross violation of every principle of law and justice, and without plaintiff and his said associate having committed or even being charged with any misdemeanor, crime or malconduct in their offices of attorneys and counselors at law, or any offense known to the law of either England or America or any other portion of the civilized world, proceeded, while falsely pretending to act as such Supreme Court, to enter a judgment of disbarment against plaintiff and his said associate solicitor, and adjudged that the names of plaintiff and the said H. B. Johnson, his associate, be at once stricken from the roll of attorneys and counselors at law of said State of Colorado, and that they be thereafter wholly prohibited from practicing their profession in the courts of said State; and plaintiff states that said judgment of disbarment is still standing unreversed and in full force, the same as a good and valid judgment would be in so far as its operation is concerned in said State, and that no appeal, writ of error, or mandamus can

under the laws of said State be made available in behalf of plaintiff and his said associate, and that said judgment is final and wholly without any legal or equitable remedy in said State; that said Supreme Court is the court of last resort in said State, and that all of its judgments and decrees are final and conclusive in said State.

That said defendants, Samuel H. Elbert, William E. Beck, and Joseph Helm, judges of said Supreme Court, unlawfully, knowingly, fraudulently, and wrongfully usurped said pretended judicial power and authority for the purpose and with the intent of aiding, abetting, and assisting said defendants, Rogers, Marsh, and Joslin, in carrying out and consummating their said unlawful conspiracy aforesaid, and in direct violation of section 1981 of chapter 24 of the civil rights bill, page 348 of said United States Statutes, which provides: "That every person who, having knowledge of any of the wrongs conspired to be done and mentioned in the preceding section, 1980, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured or his legal representatives for all damages caused by such wrongful act which said person by reasonable diligence could have prevented, and such damages may be recovered by an action on the case, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in such action," etc.

Plaintiff also states that said judges of said Supreme Court colluded, confederated, and conspired with said Rogers, Marsh, and Joslin to carry out and consummate said unlawful original conspiracy as aforesaid.

Plaintiff states that said unlawful disbarment of himself and his associate solicitor was made with the intention and for the purposes on the part of all of said

defendants of preventing the said Isabel J. Newton and her said husband and their said solicitors from having the equal protection of the laws in either the said United States Circuit Court or in any State Court in said State; that said disbarment of her said solicitors even prevented her and her said husband from dismissing said suit in the said United States Circuit Court and recommencing it in a State Court, as her said solicitors could not appear at all in any State Court, and no other attorneys or counselors at law could appear for her and her said husband without subjecting themselves to the pains and penalties of disbarment and the loss of their profession, nor could any other attorneys of said State appear in said suit in the United States Circuit Court to prosecute said bill in equity without defiance of the opinion of said Supreme Court and said judgment of disbarment, nor without subjecting themselves to the pains and penalties of disbarment and the loss of their own profession, and in case the plaintiff and his said associate should not go on with the same under the severe penalty of disbarment already inflicted, and destroy all hope of ever being restored to the bar of said State, which can only be done under the laws of said State at the discretion of said Supreme Court, then the said Isabel J. Newton and her said husband would be wholly and entirely helpless and absolutely deprived of all protection under the laws in said State of Colorado, either in the State or the United States Courts in said State; and plaintiff states that said defendants have deprived him of his said profession in the State of Colorado and inflicted the great wrong and injustice upon him aforesaid in gross violation of the said provisions of said "civil rights bill," and plaintiff states that said judges of said Supreme Court cannot, even when they have jurisdiction of the subject-matter of a suit, act in violation of the acts of Congress, and cannot willfully, maliciously,

and with impunity violate the paramount laws of the land.

Plaintiff further states that section 5407, chapter 4, Revised Statutes of the United States, p. 1047, in support of said sections of the "civil rights bill," and a part of the said sections 1979, 1980, on which this action is brought, are in words and figures as follows, to wit:

"If two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the law or injure him or his property for lawfully enforcing or attempting to enforce the right of any person or class of persons to the equal protection of the laws, each of such persons shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment."

Plaintiff states that the above provision is in snpport of said sections of the civil rights bill above referred to and makes a criminal as well as a civil liability for the violation of the same.

Plaintiff further states that on the hearing of said disbarment proceedings before said Supreme Court both himself and his said associate attorney urged upon said Court that in case they should disbar them that it would wholly obstruct the administration of justice in the said equity suit in the said United States Circuit Court in so far as the said Isabel J. Newton and her said husband were concerned, and leave them in a helpless and remediless condition as to the same, and wholly deprive them of their rights in said Court, and that the same would work great wrong, injury, and oppression as to the said

Isabel J. Newton and her said husband and their solicitors, and that plaintiff and his said associate solicitor earnestly urged upon the said judges of said Court the necessity at least of deferring said disbarment proceedings until after said suit should be heard and disposed of in the said United States Circuit Court, but that said judges of said Supreme Court, at the request of said Rogers, Marsh, and Joslin, wholly defied all of the protests of plaintiff and his said associate attorney, and with a corrupt partiality toward said Rogers, Marsh, and Joslin, and with the intention and for the unlawful purpose of hindering, obstructing, and defeating a full, complete, and impartial hearing and trial of said suit in equity in the said United States Circuit Court, and for the further purpose of preventing an exposure of the said crimes and corruption charged against said Rogers as judge of said Superior Court and against said Marsh and Joslin for bribing and corrupting said Rogers as judge of said Superior Court, did render the said corrupt judgment of disbarment; and the said judges of said Supreme Court proceeded to disbar plaintiff and his said associate as aforesaid, and falsely pretended to be acting as the Supreme Court of Colorado when they well knew that they had no shadow of jurisdiction of the false and pretended offense charged against plaintiff and his associate solicitor in said bill, and well knowing that no disbarable offense or any offense of any kind whatever was charged against plaintiff and his said associate ever known to the law anywhere or at any time, and well knowing that all of said charges in said bill in equity were material to the same and were all privileged on the part of plaintiff and his said associate solicitor as the solicitors for the said complainants in said bill, and that said judges well knew at that time that they were directly violating the above sections 1979, 1980, 1981, and 5407 of the statutes of the

United States as aforesaid, and that the acts of Congress are the paramount laws of the land and cannot be violated with impunity in that manner.

That all of said unlawful, malicious, oppressive, corrupt and tyrannical acts above mentioned have been done and performed since the filing of said bill in equity and since the said United States Circuit Court assumed full and complete jurisdiction over the sam and since the defendants in said suit filed all of their answers and took issue on all of the said charges in said bill as being material allegations in the same, and since said suit has been standing in said Circuit Court, with the issues all made up and ready for final hearing or trial.

That the complainants in said bill have been urging the same to final hearing; but the said defendant, J. Jay Joslin, who is also a defendant in said bill and the principal party in interest in the same, and who has the full control and management of the same for all of said defendants, has, in pursuance of said conspiracy, been doing everything in his power to delay the hearing and trial of the same, and did succeed in delaying the same until himself and his said co conspirators had obtained said judgment of disbarment against plaintiff and his said associate solicitor for the purpose and with the intention of hindering, obstructing, and defeating the further prosecution of said suit in the said United States Circuit Court by harassing, oppressing, punishing, intimidating, and deterring plaintiff and his said associate solicitor from acting further as the solicitors of complainants in the same, and for the purpose of intimidating and preventing any other attorneys and counselors at law in the State of Colorado from undertaking the prosecution of said suit under the pain and penalties of disbarment and the loss of their profession in the said State of Colorado; and plaintiff states that the said judges of said Supreme Court

were fully advised and informed of such acts, purposes, and intentions on the part of said Joslin, Rogers, and Marsh before and at the time said judges entered said judgment of disbarment; and plaintiff charges that said judges, unlawfully, wrongfully, maliciously, and with the intention and for the purpose of aiding, abetting, and assisting said Rogers, Marsh, and Joslin in their said unlawful conspiracy and purposes aforesaid, maliciously and wrongfully and without jurisdiction or authority and in great haste, to prevent said trial, entered said judgment of disbarment as aforesaid.

That said defendants Elbert, Beck and Helm had full knowledge of the said unlawful conspiracy and collusion and wrongful and unlawful purposes and intentions of said defendants Rogers, Marsh, and Joslin long before entering said judgment of disbarment against plaintiff and his associate solicitor and could have wholly prevented the same and have refused to enter said judgment of disbarment, and could have prevented said conspirators, Rogers, Marsh, and Joslin, from carrying out all of their said unlawful and wrongful purposes, but wholly neglected and refused to do so as aforesaid and in violation of the statute in such case made and provided.

Plaintiff states that his profession as an attorney and counselor at law is now and has been for several years past worth to him the sum of $25,000 per year at least, and afforded him an income of not less than $25,000 per year, and was growing more and more valuable every year, and that his said law business was rapidly increasing from year to year in said State of Colorado and in the Courts of Record of said State before the entering of said unlawful judgment of disbarment as aforesaid, and that the entering of said judgment has wholly ruined and broken up plaintiff's law business and practice in the Courts of said State, and that said judges of said Supreme

Court, at the time they entered said judgment of disbarment, wrote out and read and published to a large number of persons, to wit, two hundred, in the Supreme Court room of said State, in the city of Denver, a false, malicious, and libelous opinion, in which all facts offered in evidence were wilfully and maliciously perverted, distorted, and misrepresented, and deliberate falsehoods were stated by said judges in said published opinion as a mere pretense and excuse for said unlawful disbarment, and falsely asserted and declared that said plaintiff and his said associate solicitor had acted with malice in filing said bill in equity, and falsely pretended that the same constituted a good and valid reason in law for the disbarment of plaintiff and his said associate solicitor, when in fact, if said false assertion had been true, it would have constituted no disbarable offense or any offense at all known to the law, as above stated; and plaintiff states that all of the said false and malicious statements and distortions and misrepresentations of the evidence and deliberate falsehoods contained in said pretended judicial opinion were published to the world through the newspapers and by the telegraph as good and sufficient reason in law for disbarment of plaintiff and his said associate, whereby plaintiff has been greatly damaged in his good name and character as an attorney and counselor at law and whereby the great injury, wrong, and damage done him by said unlawful and malicious disbarment has been greatly aggravated, and which plaintiff alleges as an aggravation of damages in this suit; and plaintiff states that even if all of the deliberate falsehoods and all of the false, distorted, and malicious matter stated in said false and malicious and pretended judicial opinion were true, still no disbarable offense or any other offense or shadow of a legal offense of any kind known to the law is contained in said malicious and pretended judicial opinion; but plaintiff states that as the

same was given under a pretended judicial sanction it was well calculated to deceive the people and to do plaintiff a great and irreparable wrong and injury.

Plaintiff therefore states that he has been damaged by defendants as aforesaid in the sum of $50,000, and he asks judgment against said defendants for the sum of $50,000 and costs of suit.

(Signed) T. A. GREEN, *Per Se.*

DEMURRER OF ROGERS, MARSH, AND JOSLIN.

Now come the defendants Merrick A. Rogers, J. Jay Joslin, and Lucius P. Marsh, defendants in the above-entitled action, and demur to the amended complaint herein filed against them, and for grounds of such demurrer show here to the Court the following:

1. It appears in and by said amended complaint that this Court has no jurisdiction of the person of either of these defendants.

2. It appears in and by said amended complaint that this Court has not jurisdiction of the subject of the action.

3. Said amended complaint does not state facts sufficient to constitute a cause of action.

4. Said amended complaint is ambiguous, unintelligible, and uncertain, in this:

1. It does not appear in said amended complaint what was alleged in the petition of said Rogers & Marsh filed in said Supreme Court to obtain the disbarment of said Green and Johnson.

2. It does not appear in said amended complaint that said Supreme Court had not jurssdiction of the subject-matter, nor that said Supreme Court did not rightfully and legally disbar said Green and Johnson.

3. It does not appear with any certainty what acts or conduct of these defendants or either of them plaintiff relies upon as ground of his recovery.

4. It does not appear what are the charges or allegations in the bill in chancery alleged in said amended complaint.

(Signed) LUCIUS P. MARSH,
For Himself and as Att'y for
Merrick A. Rogers and J. Jay Joslin.

DEMURRER OF ELBERT, BECK, AND HELM.

And now come the defendants, Samuel H. Elbert, William H. Beck, and Joseph C. Helm, by L. S. Dixon, their attorney, and demur to the amended complaint of the plaintiff herein, and for grounds of demurrer say:

1st. That the Court has no jurisdiction of the persons of these defendants.

2d. That several causes of action have been improperly united.

3d. That the amended complaint does not state facts sufficient to constitute a cause of action.

4th. That the said amended complaint is ambiguous, unintelligible, and uncertain.

(Signed) L. S. DIXON,
Defendants' Attorney, Denver, Colo.

ASSIGNMENT OE ERRORS.

And now at this term of said Court, before the justice of the Supreme Court of the United States at the capitol in the city of Washington, D. C., comes the said Thomas A. Green in his own proper person and says that in the record and proceedings aforesaid, there is manifest error in this, to-wit:

I.

The Court below erred in sustaining the demurrer of Merrick A. Rogers, Lucius P. Marsh and J. J. Joslin to the amended complaint of the said plaintiff in error.

II.

The Court below erred in holding that the said Supreme Court of the State of Colorado had jurisdiction of said disbarment matter, and jurisdiction to punish for an alleged contempt committed in the United States Circuit Court for tne district of Colorado.

III.

The Court below erred in not overruling said demurrer, and in not holding that the said Supreme Court of Colorado had no jurisdiction whatever in matters of contempt before the United States Circuit Court for the district of Colorado.

IV.

The Court below erred in holding that said amended complaint does not state facts sufficient to constitute a cause of action.

V.

The Court below erred in holding that the amended complaint is ambiguous, unintelligible, and uncertain.

VI.

The Court below erred in sustaining the demurrer of Samuel H. Elbert, William E. Beck, and Joseph C. Helm to the said amended complaint.

VII.

The Court below erred in holding that it had no juris-

diction of the persons of said defendants, after they had appeared and made a defense to the merits of the case.

VIII.

The Court below also erred under this demurrer in holding that several causes of action were improperly united.

IX.

The Court below erred in holding that said amended complaint does not state facts sufficient to constitute a cause of action.

X.

The Court below erred in holding on this demurrer that the said amended complaint is ambiguous, unintelligible, and uncertain.

XI.

The Court also erred in not overruling both of said demurrers.

XII.

The Court below erred in rendering judgment against plaintiff in error, and in not rendering judgment on said demurrers against said defendants.

Wherefore, said plaintiff in error prays that the said judgment aforesaid may be reversed, annulled, and held for naught; and that he may be restored to all things which he hath lost by occasion of the said judgment.

BRIEF AND ARGUMENT.

1.

This is an action for damages brought upon sections 1979, 1980, 1981, chapter 24, civil rights bill, Revised Statutes, 1878, pp. 347-8; and for a violation of section 5407, of Criminal Statutes of the United States, chapter 4, Revised Statutes of the United States, 1878, p. 1047, which section is in support of said sections of the civil rights bill; and forms a part of the same.

The defendants all demur to the amended complaint, which admits all the material allegations of the same; and raises a number of very important legal questions. In many respects this may be considered an action of *new impressions;* but it is not wholly so. At the very outset we are met by grave and important questions of constitutional law growing out of the said sections of the civil rights bill on which the action is founded; and we are also met with the important question touching the jurisdiction of the Supreme Court of the State of Colorado in the disbarment matter mentioned in said complaint; and the still more important question of the personal responsibility of judges of courts, who act without and beyond their jurisdiction and authority; and in addition to all of the above important questions we must consider how far, if at all, the Courts of a State can willfully, intentionally and maliciously violate the remedial and criminal statutes of Congress with impunity, simply because they are Courts, which claim or pretend to be acting as such Courts either with or without jurisdiction. We must also consider, to some extent at least, the grand principles of the law touching the rights, privileges and immunities of both judges of courts and attorneys and counselors at law. It will, therefore, be seen at once that these are formidable questions; and that some of them at

least have never been directly and fully passed upon by our courts, and still remain, to some extent, unsettled questions; but I shall maintain that all of the above questions, which are absolutely necessary to the recovery of plaintiff in error in this action, have been fully and conclusively settled by the Supreme Court of the United States in favor of plaintiff in error, either directly or indirectly, and by the force and logic of the decisions of this high tribunal touching these questions.

2.

Are any or all of the above sections of the civil rights bill constitutional? I believe that no civil action for mere damages, growing out of the civil rights bill, has ever been before the Supreme Court of the United States; and, therefore, no section of chapter 24 of said bill has ever been directly passed upon by this Court; but there have been several decisions of the Supreme Court of the United States in regard to the constitutjonality of certain sections of the *criminal* statutes, which are in the same language and made in support of the civil rights bill.

In the case of the United States vs. Haines, 100 U. S., 629, it was held that section 5518 was unconstitutional, because it applied wholly to the punishment of conspiracy of the nature mentioned therein, against the *constitutional authorities of any State*, and did not apply to the constituted authorities of the United States, and could not be so construed as to be limited to the constituted authorities of the United States. Although this section 5519 has nothing to do with the action at bar, yet this decision is of great importance as throwing light on the sections of the civil rights bill upon which this action is necessarily founded.

The reasons given by the Court why this section is

unconstitutional show very clearly that all of the other sections mentioned in the complaint are constitutional; because they do apply to the United States Courts and United States authorities, and can be so construed as to apply wholly to the same. The very language used in section 1980, second clause, limits the conspiracies mention therein to the *United States Courts;* and so far as this action is concerned, and leaving out all but what pertains to this action, it is as follows, to wit:

"If two or more persons in any State or Territory, conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice, in any State or Territory, *in the United States Courts*, with intent to deny to any citizen the equal protection of the laws, *or to injure him or his property for lawfully enforcing or attempting to enforce the rights of any person*, or class of persons, to the equal protection of the laws," etc., etc.

It is true that "*any Courts of the United States*" are mentioned at the beginning of this second clause of section 1980; but everything in that whole clause applies to the *Courts of the United States*, and cannot by any rule of construction be applied to any other Courts; and this settles beyond all possibility of doubt that this section, or this part of it, is constitutional; and that too under the decision above referred to of The United States vs. Haines, 106 U. S., 629.

The criminal section 5519, above declared unconstitutional, together with sections 5508 and 5336, have all been before the Supreme Court of the United States at a former term—1887—on the application of one Baldwin for a writ of error to the United States Circuit Court for the district of California.

Chief Justice Waite delivered an elaborate opinion, reaffirming the unconstitutionality of section 5519 for the reasons above stated; but sustaining the constitutionality

of sections 5336 and 5508. This last section was held constitutional in *ex parte* Yarbrough, 110 U. S., 651-657.

In the Baldwin case Chief Justice Waite says: "It is argued, however, that this section—5519—although unconstitutional as applied to the facts as set forth in the Harris case, is not so when applied to facts in the Baldwin case; because the persons conspired against in the former instance were citizens, while in the latter they were aliens entitled to protection under the United States treaty.

"In support of this argument reliance is had in the well settled rule that a statute may be in part constitutional and in part unconstitutional, and that under some circumstances the part which is constitutional may be enforced and only that which is unconstitutional rejected. To give effect to this rule, however, the part which is constitutional and that which is unconstitutional must be capable of separation, so that each may be placed by itself."

"This statute—section 5519—is not, however, of this character, and limitation must be made, if at all, by construction, and not by separation. This, it has often been decided, is not enough; and it is clear in the opinion of the Court that section 5519 cannot be substantiated in whole or in part without overruling the case of the U. S. vs. Haines; and this Court sees no reason for doing so."

I quote the above to show the rule of construction in regard to statutes; and to show that section 5519 may be unconstitutional and that any one or all of the other sections of the civil rights bill and criminal statutes in support of the same may be constitutional; and a careful examination of the reasoning of the Court in the opinion in the Haines case will show that sections 1979, 1980, 1981, on which this action is especially founded, are constitutional, or at least all the clauses of section 1980 re-

lied on this case. This section is divided, in the statutes, into three different and distinct clauses or parts, and each part numbered, and constitutes a large section of itself.

I rely especially on the second clause of section 1980 and on section 1981 of the Civil Rights Bill, and on the criminal statute, section 5407, chapter 4, Revised Statutes of the U. S. 1878, page 1047. All of these sections are in full force and constitutional.

This criminal statute is simply a repetition of that portion of section 1980, of the Civil Rights Bill, on which this action is founded, and in the same language; and I maintain that if defendants have violated a criminal provision of the U. S. statutes by disbarring plaintiff in error as an attorney and counselor at law, and thereby obstructing the due administration of justice in the said United States Circuit Court, that this alone gives plaintiff in error a good cause of action for damages; but inasmuch as these sections, 1980 and 5407, are in the same language, that only one cause of civil action grows out of them both; and that this action, even in this regard, is not double.

If these sections 1980 and 5407 are constitutional, then section 1981 must also be constitutional, as it provides for the civil liability of all persons who have knowledge of the existence of any of the conspiracies mentioned in section 1980, and who can and will not prevent the consummation of the same; but under the allegations of this complaint the judges of the Supreme Court of Colorado would also be guilty of a violation of the said criminal section 5407; and under the allegations of the amended complaint in this action there can be but one cause of action and all of the defendants can be united as co-conspirators, which they all admit themselves to be by their demurrers to the complaint, but I maintain that under sections 1980 and 1981, all original conspirators

and all persons who have full knowledge of such conspiracy, and could have prevented the carrying out of the same and failed and refused to do so, can be united as defendants in the same action; but as the demurrers admit the allegation of the complaint that all of the defendants were co-conspiraiors in the original conspiracy, I need not discuss this question. *A conspiracy can only constitute one cause of action, no matter how many statutes are violated.*

The case of *Ex parte* Virginia, 100 U. S., 339, throws much light on these questions, and may be more fully considered hereafter, touching the liability of the judges of the Supreme Court of Colorado. In order to understand the matter fully, I will set out all of the above sections in full. They are as follows:

SECTION 1979—"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the *deprivation of any rights, privileges, or immunities*, secured by the Constitution and laws (of the United States), shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

This section is so far-reaching in its provisions as to rights and privileges under the Constitution and laws of the United States that it would seem to include every and all rights and privileges mentioned in all of the sections of the Civil Rights Bill, and no doubt does; but actions under this section may be brought against a single person or a number of persons without alleging a conspiracy; but an action can also be brought under it, alleging a conspiracy of two or more persons to violate any of its provisions, the same as under the other sections of the Civil Rights Bill, which provide for actions against con-

spirators; so that there is but *one cause of action* with a *double aspect* alleged in the complaint, and which is good pleading, as many actions or *causes of action* have a double aspect, but can and must be all united in the same count as one cause of action. This action is founded on a *conspiracy* to violate all of the above provisions of the Acts of Congress in so far as the same apply to the facts of this case, and in so far as they are all substantially the same in that regard. This is all that need be said touching the questions of pleading.

The second clause of Section 1980, is as follows:

"*Second*—If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threats, any *party* or witness *in any Court of the United States* from attending such Court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such *party* or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment or indictment of any grand or petit juror in *any such court*, or to injure such juror in his person or property on account of any verdict, presentment, lawfully assented to by him, or of his being or having been such juror; *or if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory (in the U. S. Courts necessarily implied) with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempting to enforce, the right of any person or class of persons, to the equal protection of the laws.*"

It will be seen that this clause of this section 1980, either expressly or by necessary implication, applies wholly to the administration of justice in the *United States Courts*, and that no possible question as to its being constitutional

can be raised even under the Haines case, 106 U. S. 629, above referred to.

Section 1981 is as follows, to wit:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section—1980—are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damage caused by such wrongful act which such person, by reasonable diligence, could have prevented; and such damages may be recovered by an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, etc., etc."

Section 5407, of the Criminal Statutes, p. 1047 Revised Statutes 1878, is as follows, to wit:

"If two or more persons in any State or Territory conspire for the purpose of *impeding, hindering, obstructing, or defeating, in any manner, the due course of justice*, in any State or Territory, with intent to deny to any citizen the equal protection of the laws, *or to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of any person or class of persons, to the equal protection of the laws*, each of such persons shall be punished by a fine of not less than five hundred, nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment."

All of these Civil Rights Acts are remedial and must be liberally construed; but the criminal provisions are substantially the same as the provisions of chapter 24, known as the Civil Rights Bill, which provides for civil actions for damages for the violation of the same; but I maintain that a civil action for damages will lie for the

violation of any one of the same or for a conspiracy to violate one or all of said provisions as a general principle of law.

3.

The allegations of the complaint bring the case at bar clearly within the above sections 1979, 1980, 1981, *and Criminal Section* 5407.

WHAT DEFENDANTS ALL ADMIT BY THEIR DEMURRERS.

They admit that they unlawfully colluded and conspired together to have plaintiff in error *wrongfully* and *illegally disbarred* with the *intention* and for the *purpose* of *impeding, hindering, obstructing* and *defeating* the due course of justice in the United States Circuit Court, in regard to said suit in equity; and to thereby prevent Mrs. Newton and her husband from having a fair and impartial hearing in said suit, and to inflict the severe penalty of disbarment and the loss of his profession upon plaintiff in error as a *punishment* for *having*, in *good faith*, and in an honest and upright manner, discharged his duty to his clients as an attorney and counselor at law, in the said United States Circuit Court, and for his honorable and faithful efforts to secure, in a lawful manner, the rights of his clients in said Court. The judges of said Supreme Court of Colorado admit that they *colluded* with the other conspirators and *fraudulently, intentionally* and *maliciously assumed* and *usurped jurisdiction* of *said disbarment* or contempt *matter* with the *intention* and for the *purpose* of *aiding* and *abetting* said *original conspirators* in *carrying out and consummating* their said *unlawful* and *criminal conspiracy*, and to *prevent* the trial of said *suit in equity;* and to prevent a full and impartial exposures of the *corruption* and *crimes* charged against Rogers, Marsh and Joslin, in said bill in equity. They admit that they had

full knowledge of the said unlawful conspiracy and that they could have wholly prevented the carrying out and consummation of the same, and not only refused and neglected to do so, but *wilfully* and *intentionally*, corruptly *joined in with said conspirators* to *assist in carrying out said original conspiracy*. The defendants all admit that they wilfully, knowingly and intentionally violated all of the above provisions of the Civil Rights Bill, on which this action is founded, and also the Criminal Act of Congress mentioned in said complaint. The judges of the Supreme Court of Colorado admit that they *delivered* and *read* to a large number of persons in the Supreme Court room, in the city of Denver, a false, malicious, corrupt and libelous opinion, and that they falsely and maliciously pretended that they had jurisdiction of said alleged contempt matter committed in the U. S. Circuit Court, and published and circulated said opinion as a legal and authoritative opinion of said Supreme Court, and wherein they wilfully, intentionally and maliciously and corruptly perverted, distorted and misrepresented all of the evidence offered on said hearing, and *even stated deliberate falsehoods* as a mere pretext for disbarring plaintiff in error; and they also admit that they acted with a *corrupt partiality* in favor of Rogers, Marsh and Joslin, and against plaintiff in error, and against Mrs. Newton and her husband, and that said judgment of disbarment is a *corrupt* judgment, and in gross violation of every principle of law and justice; and that said judges of said Court *corruptly* assumed and intentionally *usurped* jurisdiction to punish plaintiff in error with the terrible penalty of disbarment and the loss of his profession in the midst of the most flattering success, and in the prime of his professional life, for a falsely alleged contempt committed in the United States Circuit Court for the District of Colorado, in filing a bill in equity wherein one Rogers, a judge of a small State Court in the

city of Denver, was indirectly charged with having taken a bribe, and it was admitted by both the said U. S. Circuit Court and also these judges themselves, to be a material allegation in said bill, and, therefore, could not be even scandalous; for no material allegation in any pleading can even be scandalous; and the amended complaint in the case at bar alleges that said charges in said bill were material, and were made in good faith and were sworn to by Mrs. Newton, the principal complainant in said bill, and who was a highly respectable and very intelligent lady; so that plaintiff in error could not have been guilty of any possible contempt even in the said U. S. Circuit Court; and both of the judges of the said U. S. Circuit Court so held and so decided, and wholly justified plaintiff in error in making the same and expressly exonerated him from all blame and all improper motives, as will appear from the opinion of Justices Brewer and Hallett in that case; and said U. S. Circuit Court wholly refused to strike said charges out of said bill; yet the said judges of the Supreme Court of Colorado, and while said suit of Mrs. Newton's was still pending and undetermined in the said U. S. Circuit Court, and against the most earnest and respectful protests of plaintiff in error, and in defiance of all the appeals in behalf of Mrs. Newton and her children, who have been robbed of a handsome fortune and reduced to abject beggary by the commission of two confessed felonies and crimes under the statutes of Colorado; and whom Mrs. Newton had charged in her bill with having bribed the said Judge Rogers to decide that the confessed felons—forced to confess in open Court and under oath from the very impossibility of concealing their most infamous crimes—were entitled to the fruits of their own crimes, and which monstrous decision, together with other testimony, led to the charge of bribery made by her in her said bill at that time still pending in the said

United States Circuit Court — I say in defiance of all of these appeals, and although said judges of said Supreme Court were assured that in case the plaintiff in error, and his associate, H. B. Johnson, who were her solicitors, should be disbarred for filing her said bill, she would be wholly unable to secure the services of any other attorneys in said State as all would incur the terrible penalty of disbarment; and unless plaintiff in error and said Johnson should be willing to go on with the prosecution of said suit in defiance of said disbarment, and in defiance of said judges, who still had the power, under the laws of Colorado, to make said disbarment temporary or permanent, her suit could not be further prosecuted in the said U. S. Circuit Court, as in her impoverished condition she was not able to retain and bring attorneys from other States to prosecute her said suit. All of these matters touching the manner in which these judges, knowingly, intentionally and against every protest and every appeal, hindered, delayed and obstructed the administration of justice in said U. S. Circuit Court, is alleged in the complaint in the case at bar, and fully admitted by both of said demurrers; and these *damning* admissions also show that these three judges of the Supreme Court of Colorado, all intentionally committed a grave penitentiary offense under the *Criminal* Statutes of Congress. Section 5407, chapter 4, Revised Statutes, p. 1047, which is in the same words as sections 1979, 1980, giving the civil remedy, provides: "That if two or more persons in any State or Territory conspire for the purpose of impeding, hindering, obstructing or defeating in any manner the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the *law*, or *injure him or his property* for lawfully enforcing or attempting to enforce, the rights of any person or class of persons to the equal protection of the laws, each

of such persons shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by *imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.*"

Now, these three judges of the Supreme Court of the State of Colorado, solemnly confess or admit by their demurrer, that they did conspire and collude with the other defendants and amongst themselves, to injure plaintiff in error and his associate, Mr. Johnson, by actually, corruptly and judicially *robbing* both of them of their professions, and attempting to inflict upon them both that indelible infamy and disgrace, which to the world always attends a disbarment of an attorney and counselor at law; and the judges, also, solemnly confess and admit by their demurrer that they did conspire to impede, hinder and obstruct the administration of justice in the said U. S. Circuit Court, wilfully and intentionally and corruptly, and against the most earnest protests of Mrs. Newton's solicitors, as alleged in the said amended complaint in the case at bar.

4.

We must stop here a few moments to consider the phenomenal condition of these judges of this Supreme Court; for it certainly has no parallel in the judicial history of England or America or any where else in the civilized world!

The first question which strikes the average legal mind is, that they must all three have been laboring under some temporary insanity; but as they have interposed no plea of idiocy or insanity, they must, at least, for the purposes of this case, be held to have been rational; but it must be confessed that this is a very violent presump-

tion in the light of the admitted facts and circumstances of the case at bar!

In the first place it would seem incredible that the Supreme judges of any Supreme Court of any State, should imagine for a moment that they possessed any power or jurisdiction to punish for any *actual* contempt even of this nature, committed by an attorney in a United States Court. Such a contempt would simply be an offense against the Court in which it was committed, and which Court alone could punish it. The *actual* contempt of putting scandalous and immaterial matter of a scandalous nature in a bill in equity can only be punished by the Court in which the bill is filed, and by no other Court in the world. It is no crime or misdemeanor or violation of any general law, and no legal offense even against the person charged with the same, as will be fully seen hereafter; but these judges, throughout this whole matter, admitted, and so admit by their demurrer, that this charge of bribery was a material allegation in said bill, and therefore could not be scandalous and could not possibly be held to be a contempt of the said U. S. Circuit Court; and it was far beyond the range of legal possibility that it could be a contempt of the Supreme Court of Colorado, or a contempt of the small city Court presided over by Judge Rogers as a matter of law; and it might be truthfully said as a matter of fact, that Rogers' Court had long before that time sunk so low beneath a general contempt that it was wholly beyond the reach of any further or additional contempt.

It is also alleged in the amended complaint in the case at bar, that there was strong proof, and more than reasonable grounds for making said charge, and which is admitted by both the demurrers.

Besides, it was a bill in equity, and largely a bill of discovery; and the allegation was that J. Jay Joslin, the

principal defendant to the bill to set aside the judgment, which he had obtained corruptly by having bribed Rogers to render it; so that the allegation was really made against Joslin; and Mrs. Newton had a right in a bill in equity to search the conscience of the principal defendant as to whether or not he obtained his judgment by bribery and corruption; and he could either answer that he had or refuse to answer at all on the ground that he would criminate himself; therefore, no direct charge at all was made against Rogers.

It will thus be seen that the action of the judges of the Supreme Court of Colorado in this regard alone was simply *judicial madness*.

5.

It may be contended that the demurrers do not admit all of the *damning* allegations of the amended complaint, and that they only admit such as are material and well-pleaded; but in an action of this nature for a *conspiracy*, the very greatest latitude is given both as to allegations in the complaint and as to evidence. This is not a narrow, technical action in which the allegation of a few ulterior propositions, or *pleading* facts, are sufficient; but in an action of this nature, where *exemplary* or *punitive* damages may be recovered, it is not only proper, but necessary to allege in the complaint all facts and circumstances which may aggravate the damages; and, where the wrong has been committed from wanton and malicious motives, or a reckless disregard of the rights of others, or under circumstances of great hardship or oppression, as in the case at bar, all such aggravating facts and circumstances may be both alleged and proved.

See Pusey et al v. Manlon, 14 Cal. 553.

Nightingale v. Scannel, 18 Cal. 325.
Dexter v. Paugh, 18 Cal. 376.

Therefore, everything alleged in said complaint is material in this regard, and well-pleaded, and the said demurrers admit all such allegations; and it will not do for defendants now, after deliberately demurring to the complaint and thereby admitting the allegations of the same, to come into this high tribunal and attempt to escape from the legal consequences of their own solemn admissions; for all admissions made in pleadings are *solemn, judicial* admissions, and must be conclusive.

These defendants all had their choice to go into the said U. S. Circuit Court, and put all of the *damning* allegations made against them in issue as matters of fact, and where the judges of said Supreme Court could have vindicated themselves and their *judicial conduct;* but they did not dare to do so, as their own judicial or pretended judicial record, together with the two elaborate opinions written by them in the case, would have proven every allegation of the said complaint, as a copy of the bill in equity filed in the U. S. Circuit Court was made a part of the disbarment proceedings. It might here be added that said judges wrote two separate opinions in the disbarment proceedings.

The first elaborate opinion was founded wholly and absolutely on the old case of White v. Nichols, 3 How. U. S. 266, and which had been both specifically and indirectly overruled by almost hundreds of cases in the United States, and had for the last thirty or forty years, I suppose, been set down as wholly overruled in Bigelow's Overruled Cases, pa. 538; and these Supreme Judges actually founded their whole decision on that old, overruled case, and which in fact never had been recognized as the law, and never was intended to apply to such cases; and the

attorney for the other side said he only offered it as a *joke*, and was much amused and astonished when these Colorado Supreme judges actually copied twenty lines from said overruled case in their first opinion, and wholly ignored a multitude of the very highest authorities offered by plaintiff in error, and never even mentioned any authority except said overruled case. Afterwards, however, plaintiff in error caused Bigelow's Overruled Cases to be shown them, whereupon they ordered their first opinion to be absolutely destroyed and suppressed; and about six weeks after rendering the judgment of disbarment, and in answer to a motion for a re-hearing made by H. B. Johnson, they wrote another opinion, which they caused to be published in the Law Magazines throughout the whole country, and which last opinion was written in a more malicious manner against plaintiff in error than the first, although he had made no motion himself for a re-hearing or done anything at all to give them occasion or opportunity to write and publish a second false and malicous and corrupt opinion as to him; but when they finally found out their first terrible and humiliating blunder, it seemed to madden them, and in their madness they committed a still greater blunder by furnishing another opinion in which they show their unprovoked malice, and which will rise up in evidence against them for that purpose, should this case ever come to a trial on its merits. It was thought proper to state this fact as it is matter of record.

6.

Before proceeding to a discussion of the law, it seems proper to ascertain just what the real *contentions* of these judges are touching this case, and touching both the law and the facts.

Their first monstrous contention is that although an attorney and counselor at law in the Federal Courts is as much an officer of such Courts as the judges themselves of the U. S. Courts, or the marshals or clerks, and just as much under the protection of the laws of the United States and just as far above and beyond the interference of the State's Courts, yet these *learned* judges of the Supreme Court of Colorado, claim the power and jurisdiction to arraign and punish attorneys and officers of the U. S. Courts for mere contempts committed in the face even of said Court. They might just as well claim the power and jurisdiction to disbar Judge Hallett of the U. S. Court for Colorado, and who is a member of the Colorado bar, in case he should make some decision they did not like.

Suppose Judge Hallett had decided Rogers guilty of bribery in the discharge of his official duties, and the Supreme Court of Colorado had proceeded to summon Judge Hallett before it for disbarment simply because Rogers was a judge of a small State Court. It must be remembered that in their opinion in disbarring plaintiff in error they put great stress on the fact that Rogers was a judge of a State Court; and that that fact alone gave them full power and jurisdiction to disbar plaintiff in error. Their absurd contention is that a judge of a State Court cannot be charged with *corruption* in a bill in chancery in a U. S. Circuit Court, no matter how guilty or how strong the proof may be against him, and their whole contention upon the argument of their demurrer in the case at bar in the Court below, was that because Rogers was the judge of a small City and State Court, that the Supreme Court of Colorado had the power and jurisdiction to punish any attorney of the U. S. Circuit Court with disbarment, who should make even an indirect and absolutely necessary charge of corruption against him in a bill in equity. That is, that not only Rogers himself

was *above all law* and *all constitutions*, but that said Joslin and his attorney, Marsh, who were charged directly in said bill, were also above all law and all constitutions because it was a judge of a State Court whom they had bribed, and that no attorney in the State of Colorado could, in the discharge of his duties in the U. S. Circuit Court, charge any State judge or any attorney or other person who may have bribed a State judge with having done so without subjecting himself to the pains and penalty of being disbarred by the Supreme Court of Colorado. These judges also, on the hearing of said demurrers, followed up this monstrous doctrine and contended that they themselves, as judges of the Supreme Court of Colorado, have the right to deliberately violate and trample upon all of the provisions of the Civil Rights Bill in the disbarment of plaintiff in error, and also to defy and trample upon the said criminal laws of the United States as set forth in the amended complaint in the case at bar; and they also claim that they had the right and power and jurisdiction to use the whole judicial power of the State of Colorado as vested in the Supreme Court of said State, to more effectually violate said Acts of Congress and said criminal laws of the United States as aforesaid. That is, the State judges claim that they are above all of the laws and the Constitution of the United States, both as individuals and as judges of said Supreme Court, and that said Rogers was the same simply because he was a judge of a small State Court, and that Joslin and everybody who participated with Rogers in said alleged corruption, was also at liberty to wilfully violate all of the said Acts of Congress with impunity; and that all said persons had a right to hinder, delay and obstruct the administration of justice in the United States Courts, and, in fact, to wholly defeat justice in said Court in defiance of all the laws of the United States touching such matters;

and all because, as they claim, the judges of the State Courts in Colorado are wholly privileged and elevated above all law by virtue of their offices. They do not seem to have known that even in England all are subject to the laws, from the King upon his throne to the meanest beggar in the streets of their cities, and that in the United States all are equal before the law, from the President to the humblest citizen; and that neither the President of the United States, nor his cabinet, nor the justices of the Supreme Court of the United States, or the justices of any of the Supreme Courts of any of the States, *except the State of* Colorado, are above either the laws of the respective States or the laws of the United States, and that any of them may be charged with any material or immaterial matter in a bill in equity—any and all of our Courts, both State and Federal, the same as the poorest and humblest individual in the whole land. The Lord only knows where these Colorado *solons* obtained their legal education, if indeed, they ever obtained a legal education anywhere. As a general rule in the State of Colorado *irresponsible* and *corrupt* political conventions *sell* all judicial nominations for whatever they can get from whoever will buy, and the lamentable result is that *ignorance* and *corruption* are *enthroned* on our judicial benches, and Colorado judges are not expected to have a legal education. But certainly the *learned* Judges of Courts have no more right to plead ignorance of the law as an excuse for their bad conduct and crimes than an ox-driver or dog-catcher in the streets of Denver. It would not be fair to hold an ox-driver or dog-catcher to a higher degree of intelligence than the Supreme Judges of a State.

It might, however, be a wise thing for the Colorado legislature to provide, as far as possible, that the judges of the Supreme Court of the State should not be responsible

for crimes *accidentally* committed by them on the judicial bench, as there seems to be actual danger that they may all suddenly land in the penitentiary. They only escaped in this case because no one prosecuted them. They certainly need some protection from their own *ignorance*, and the rule that everyone is presumed to know the law should be at once abolished as to them.

But the above are not all of the *monstrous* contentions made by these judges in support of their demurrer in the case at bar.

They most earnestly contend that *in so far as the State Judges of Colorado are concerned*, the laws of Congress are not the paramount laws of the land, and they scout the doctrine that neither State Constitutions, State Legislatures or State Courts, either high or low, can in any possible manner violate the Constitution and *laws* of the United States with impunity, and they especially deny and hold that Judge Rogers, of a small Court in the city of Denver, and themselves, as Judges of the Supreme Court of Colorado, are at all bound by the laws of Congress, either civil or criminal, and claim the power and jurisdiction to punish attorneys of the U. S. Courts, and if attorneys of said Courts, then all officers and judges of said Courts for any thing they may do in the line of their respective duties in said Courts, and under the laws of Congress, in case State Judges are reflected upon, even if these State Judges directly violate both the civil and criminal laws of Congress in doing so.

They also make the monstrous contention that they can disbar any and all members of the Colorado bar *wantonly* and at their mere pleasure, no matter whether he is guilty of any crime, misdemeanor, or any kind of *malconduct* in his office as an attorney or not, and even without his being guilty of any contempt of any Court, or judge of any Court whatever, when chapter 6, of the General

Statutes of Colorado, 1883, specifically provides that no attorney's name shall be stricken from the roll except for *malconduct* in his office after notice and a fair trial, etc. See pp. 136, 137, sections 6, 7.

The above is a mere out-line of the absurd claims and contentions of these Supreme Judges of Colorado; and relying wholly on such contentions come into Court and file their demurrer, and confess or admit the truth of all the *damning* allegations of the complaint—that they are *unconvicted* felons, and criminal conspirators, judicial usurpers and judicial tyrants, and that they intentionally and maliciously distorted and perverted all of the evidence on the judicial bench, and stated deliberate falsehoods, and made themselves judicial falsifiers as a mere pretext for committing a judicial outrage, and seek to escape the consequences of conduct the most infamous, and even felonious crimes that would land other citizens in the penitentiary, simply *because they were Judges of a State Court.*

9.

If the above formidable catalogue of admissions do not constitute an aggravated violation of all of the Acts of Congress set forth above, it would be impossible to imagine what would constitute a violation of the same.

It is really said that the judges of the Supreme Court of a young but proud State, should, in a solemn judicial record, make such lamentable and humiliating and even criminal admissions of their own illegal, wrongful, oppressive, corrupt and tyrannical conduct on the highest judicial bench of the State, in order to escape, if possible, a personal responsibility for their own illegal and shameful actions as judges of said Court.

The whole judicial history of both England and Amer

ica, for a century, at least, furnishes no such *sad* and *humiliating* spectacle as this. And to the enduring honor of the judiciary of that great kingdom and our own great nation, it may well be doubted whether the whole judicial history of both countries ever before furnished such a *humiliating* sight. This sad exhibition of judicial ignorance, incompetency, corruption and stupidity, coupled with such judicial oppression and tyranny has been left for the young State of Colorado.

10.

The law wisely presumes that all men intend the natural, reasonable and logical consequences of their own acts; and this wise rule of the law applies, with peculiar force, to judges of a high Court, so that their *pretended* judicial action admits of no explanation outside of the solemn record itself; and they must stand by that record and all of its legitimate consequences. And all of this, too, as they admit by their demurrer, for the purpose of sheltering and protecting the *infamous robbers* of a helpless woman and her little children, and to enable the *robbers to hold and to enjoy the fruits of their own crimes*, and to cut off the injured woman wholly from all remedy.

11.

THE SUPREME COURT OF COLORADO HAD NO SHADOW OF JURISDICTION OF THE PRETENDED SUBJECT MATTER OF SAID CONTEMPT AND DISBARRMENT PROCEEDINGS; AND WHERE THERE IS NO JURISDICTION OF THE SUBJECT-MATTER, AND NO CAUSE OF ACTION AT ALL KNOWN TO THE LAW, THERE CAN BE NO COURT AND NO JUDICIAL ACTION, AND ANY JUDGMENT, ORDER OR DECREE OF SUCH A PRETENDED COURT IS WHOLLY VOID, AND NOTHING BUT A *Brutum fulmen*.

Several things are absolutely necessary to give jurisdiction even in Courts of general jurisdiction. There must be jurisdiciion of the territory, jurisdiction of the subject-matter, and jurisdiction of the person. All Judges of Courts who act without jurisdiction are trespassers, and all who act as officers under them are trespassers, and all liable alike for damages. It would be absurd to say that a constable, sheriff or marshal should be held personally liable when executing writs issued by Courts having no jurisdiction, when the judge or judges of such Courts are not also personally liable. Judges of Courts are the same as other citizens when acting without jurisdiction. The holding of a judicial office is not a protection to wrong-doers, and an *unlimited license* to commit acts of wrong and oppression under a pretense or usurpation of judicial power! Unlicensed and unbridled judicial power has always, and always will, degenerate into odious and intolerable tyranny and judicial corruption, which is the most abhorrent of all despotisms, and may, when unchecked, soon become the most common and most dangerous. It has always been conceded by all authorities in both England and America, that when judges of Courts act wholly without and beyond their jurisdiction and any person is injured or damaged by such action, that they are mere trespassers and responsible as other men to the party injured in damages, and nothing but *jurisdiction* can protect judges of Courts from personal liability. It is the great fundamental *principle* of our Government that the *law must govern—nothing but the law can deprive citizens of their lives, their liberty and their property*, and not the mere pleasure, whims, discretion, spite, malice, revenge or corrupt and selfish motives of a man because he has been elevated to a judicial office. It is absurd to say that a judge of a Court is wholly above and beyond all law. As a matter of public policy the law

protects him in all mere errors of opinion and judgment when acting within, or even *partially* within his jurisdiction, as some cases hold; but when he gets wholly without and beyond his jurisdiction, and attempts to deprive men of their most sacred rights, under the mere pretense of judicial power, he becomes the worst and most dangerous of all the trespassers upon human rights; and when he does so wilfully and maliciously, he simply becomes a *judicial robber, a judicial usurper and tyrant.*

There is some *nice* learning and *fine* distinctions in the books touching the difference between an *excess* of jurisdiction and a *total* want of jurisdiction, some Courts holding that when there is merely an *excess* of jurisdiction or power a judge of a Court is not personally liable, and there is a great conflict of authorities on this point; but all authorities agree that where there is a *total* want of jurisdiction all judges of Courts are personally liable; and in the case at bar there was not and could not, from the very nature of the case itself, be a shadow of jurisdiction, power or authority in the Supreme Court of Colorado to disbar or punish plaintiff in error for filing a bill in equity in the United States Circuit Court, *even* if he had made *scandalous* and *immaterial* charges in the same, as that would only have constituted a very common contempt of the Court in which the bill was filed, and which from the very nature of such an offense, that Court alone could have jurisdiction. A contempt of that kind cannot possibly be an offense against any one but the Court itself in which it is committed, and which may or may not, in its own discretion, punish such a contempt; and the charging of scandalous and impertinent matter in a bill in equity is one of the very mildest forms of contempt and seldom, if ever, punished with anything more than the payment of the costs of striking it out. In the whole history of English and American jurisprudence it has

never been held to be a disbarable offense; but no such charge as that *even* was made against plaintiff, as the charges complained of were admitted to be material, and therefore could not be *scandalous* or *impertinent*. As such an offense is peculiar to the Court alone in which it is committed, and is not a violation of any law of the land, how could it be possible for another Court, and that, too, of a foreign jurisdiction, to have power to punish for it? What greater legal absurdity could be thought of? This matter has been definitely settled by the Supreme Court of the United States in *Ex parte* Bradley, 7 Wall. 364, and Bradley v. Fisher, 13 Wall. 335. There is also a discussion in the latter case as to the distinction between mere *excess* of jurisdiction and no jurisdiction at all; but this question has nothing to do with the case at bar except that it throws much light upon the whole doctrine of the personal responsibility of judges of Courts.

One of the most elaborate cases found in the books, and the strongest case against the personal responsibility of judges, is that of Lange v. Benedict, 73 N. Y. The same case is also found in the 29th American Reports, pp. 80-96, with a note showing that the case is not sound law and that it is referred to and overruled in *Ex parte* Parks, 93 U. S. 25, and in *Ex parte* Lange, 18 Wall. 175; but even according to the doctrine of Lange v. Benedict, 73 N. Y., just referred to as the most extreme case against the personal liability of judges, the case at bar is well founded; because the judge in that case only escaped on the ground of a mere *excess* of jurisdiction; but in the case at bar there is an absolute want of jurisdiction. The following authorities all bear on this point, to wit: Miller v. Adams, 52 N. Y. 409-416. There is a full reference to all the authorities in this case touching the personal responsibility of all parties where there is no jurisdiction. Examine Clark v. Holdridge, 58 Bar. 61; 1 Hilliard on

Torts (4th Ed.) 215; *Ex parte* Haines 18 Wend. 611; Perkins v. Proctor, 2 Wis. 382; Farnham v. Hildreth, 32 Bar. 277; Caldwell v. Colgate, 7 Barb. 253; Fort v. Stevens, 17 Wend. 483-487; Barnes v. Haines, 4 N. Y. 379. There is a multitude of authorities on this point, but it would be useless to refer to them all; for all concede that when there is no *jurisdiction* at all in a Court, that judges and all officers who enforce its judgments or decrees are personally liable as trespassers; and the case at bar comes within all of the authorities in America.

12.

BUT THE ACTION AT BAR IS VERY DIFFERENT FROM AN ORDINARY ACTION AGAINST A JUDGE OR JUDGES OF A COURT FOR A WANT OF JURISDICTION, NO MATTER WHETHER IT BE TOTAL, OR OTHERWISE.

THIS IS AN ACTION FOR THE VIOLATION OF THE PROVISIONS OF THE CIVIL RIGHTS BILL, AND CRIMINAL ACTS OF CONGRESS IN SUPPORT OF THE SAME, WHICH MAKES AN IMMENSE DIFFERENCE; AND THE SUPREME COURT OF COLORADO NOT ONLY ACTED WITHOUT POWER, AUTHORITY OR JURISDICTION, BUT IN ACTING AS IT DID, IT ALSO WILFULLY, INTENTIONALLY AND MALICIOUSLY VIOLATED THE ABOVE PROVISIONS OF THE ACTS OF CONGRESS.

It may well be doubted whether any State Court, *even* when it has jurisdiction of the subject-matter, can wilfully and intentionally so adjudicate upon the same, as to violate the provisions of the Civil Rights Bill and Criminal Acts in support of the said Bill, with impunity, and plead their privileges as judges as a defense to either a civil action or criminal prosecution under said Acts of Congress.

If they can, then all of those stringent laws of Congress can easily be defied, defeated and

mocked at by the legislative and judicial powers of the States, as the legislatures of the States could pass laws for the sole purpose of defeating those Acts of Congress and State Courts could enforce such laws and claim they were acting within their jurisdiction and as Courts, and that those Acts of Congress do not apply to State Courts. Section 1979, above set out, seems to apply to just such cases, but as I do not deem it necessary to establish this doctrine in order to maintain the case at bar, I shall not enter into a lengthy discussion of the same; but I will call the attention of this Honorable Court to the case of *Ex parte* Virginia, 100 U. S., 339, which throws much light on this important subject. In that case a judge of a County Court in Virginia was indicted under a section of the criminal Acts of Congress in support of the Civil Rights Bill, and the Supreme Court of the U. S. sustained that indictment, but held that in that particular case the judge was not acting judicially, but ministerially; but the intimation seems to be that it would make no difference, and that the section of the law would not be unconstitutional even if it did impose a penalty upon State judges when acting judicially and when acting in violation of the laws of Congress or of their own State. This presents a most formidable question; but I shall content myself with a brief statement of what I conceive to be the true doctrine. As the Constitution and laws of the United States are over and above all State Constitutions, laws, ordinances, rules, customs and high above all State legislation and judicial power, all laws that a State may enact and State Courts attempt to enforce, which are in conflict with the Constitution and laws of Congress, are wholly and absolutely void, and that no judges of State Courts would be protected in attempting to wilfully and intentionally violate the Civil Rights Bill by enforcing such void laws. For instance,

if the laws of Colorado have conferred full and absolute power on the Supreme Court of the State to disbar attorneys at their mere discretion and pleasure, could the judges of that Court have disbarred plaintiff, if in doing so they would have violated the Civil Rights Bill and the criminal Acts of Congress in support of the same? Can they plead their own wilful and intentional violation of said Acts of Congress as a defense to this action; or could they do so as a defense to a criminal prosecution? It seems to me these questions answer themselves.

13.

WHATEVER MAY BE THE TRUE DOCTRINE IN REGARD TO THE APPLICATION OF THE ABOVE MENTIONED ACTS OF CONGRESS TO STATE COURTS, WHEN ACTING WITHIN THE JURISDICTION CONFERRED ON THEM BY STATE LAWS, AND, YET BY THEIR JUDICIAL ACTION DIRECTLY VIOLATING SAID ACTS OF CONGRESS, IT SEEMS TO ME THAT IT MUST BE CERTAIN THAT JUDGES OF STATE COURTS, IN ORDER TO DEFEND THEMSELVES AGAINST EITHER CIVIL ACTIONS OR CRIMINAL PROSECUTIONS FOR WILFUL AND INTENTIONAL VIOLATION OF SAID LAWS OF CONGRESS MUST ANYHOW SHOW AFFIRMATIVELY THAT THEY ACTED WHOLLY AND ABSOLUTELY WITHIN THEIR JURISDICTION AND POWER, AND THAT NO JUDICIAL ACTION IN PERSUANCE OF STATE LAWS, ORDINANCES OR CUSTOMS WHICH ARE VOID BECAUSE IN CONFLICT WITH THE LAWS OF CONGRESS CAN PROTECT THEM.

This is wherein the action at bar differs so widely from the ordinary actions in the books for damages against judges of courts simply because they had no jurisdiction or power to adjudicate upon the subject matter of an action. The foundation of this action has a double aspect. 1. Because the Supreme Court of Colorado had no

shadow of jurisdiction of the subject-matter; and, 2. Because their pretended judicial action was a most aggravated violation of the above section of the Civil Rights Bill and the Criminal Acts of Congress in support of the same.

I confess that the case at bar presents some formidable legal questions; but it seems to me that it is not at all necessary to solve all of these profound questions of law in order to sustain plaintiff's action. I have merely touched upon some of the most difficult questions for the purpose of throwing light upon the more simple questions upon which the case is founded.

14.

To merely act in concert and co-operate together for one common unlawful purpose constitutes a conspiracy; and the more Acts of Congress, or provisions of the Civil Rights Bill and Criminal Acts in support of the same these defendants have violated, the more aggravated the conspiracy becomes; and it makes no difference if they had violated fifty Acts of Congress in carrying out and consummating such conspiracy, it constitutes but one *conspiracy*, and *one cause* of *action*, however many statutes they may have violated, or however aggravated their conduct may have been.

See McCabe vs. Burns, 66 Pa. St., 356.
Lowery vs. State, 30 Tex., 402.
Lafferty vs. Vanarsdale, 65 Pa., St. 507.
Jones vs. Baker, 7 Cow. 445.
Gardner vs. Preston, 2 Day, 209.
Tappins vs. Powers, 2 Hall, 277.

There are multitudes of cases in the book establishing the above doctrine; but I will not enumerate them all

here as a mere matter of show or ostentation. The demurrers admits the collusion and conspiring as alleged in the complaint.

15.

Section 73, p. 136 of the General Statutes of Colorado, 1883, provides: That the judges of the Supreme in *open court*, shall have power, at their *discretion* to strike the name of any attorney or counsellor at law from the roll for *malconduct in his office*. That Court has no power to strike an attorney's name from the roll unless he has been guilty of *malconduct in his office*. If so, the Court may then at its *discretion* strike his name from the roll, and we must look to the law to ascertain what is such *malconduct* in office as will justify a Court in disbarring an attorney. Even after he has been guilty of *malconduct* in his office of attorney and counsellor at law, still, the Court must exercise a sound, judicial discretion in striking his name from the roll. The Supreme Court of Colorado cannot in a *wanton*, *malicious* and *tyranical* manner strike an attorney's name from the roll for *nothing*, but in the case at bar they have not only done so for *nothing*; but have actually done so because the plaintiff was honestly and faithfully discharging his duties as an attorney and counsellor at law in the United States Circuit Court, to a helpless client, who had been most shamefully *robbed* under the most aggravated and criminal circumstances by a lot of most infamous conspirators and scoundrels, and when the conduct of an attorney should have commanded the commendation of every one, whether a judge of a Court or not, who has either heart, conscience, sense or manhood. Let any man read the plain, truthful statements and history of Mrs. Newton's

wrongs as set out in that bill in equity and learn the subsequent history of the case and see the amount of cool, deliberate perjury as shown by their own evidence, the judicial outrages and corrupt partiality of the State Courts in order to shelter her robbers and secure to them the fruits of their own crimes; and then attempt to condemn an attorney for trying in a legal and honorable way to protect her rights, if he could.

But if the Supreme Court of Colorado had no jurisdiction of the subject matter of the disbarment proceedings the judges are liable for damages, no matter how the merits of the case may have been.

16.

ATTORNEYS AND COUNSELLORS AT LAW ARE WHOLLY AND ABSOLUTELY PRIVILEGED FROM ALL PERSONAL LIABILITY, SUITS, FORFEITURES, HARRASSMENTS AND PAINS AND PENALTIES OF EVERY KIND, CIVIL OR CRIMINAL, FOR WHAT THEY MAY DO IN THE LINE OF THEIR DUTIES AS SUCH ATTORNEYS AND COUNSELLORS AT LAW. NOR ARE THEY HELD STRICTLY, IF AT ALL, TO THE MATERIALITY OF WHAT THEY MAY ALLEGE IN PLEADINGS OR ASSERT IN ARGUMENT IN OPEN COURT, IF SUCH MATTER HAS ANY CONNECTION AT ALL WITH THE CASE OR THROWS ANY LIGHT UPON THE SAME.

The above is the true rule in both England and America, although some of the American cases would seem to imply that charges made in a pleading must be *material* to the issues, or an attorney might be held responsible for libel; but this is mere *dicta*, as there is no case in the books where an attorney has been held so responsible, and such a doctrine would be absurd, as it is often very difficult to tell or determine just what is and

is not material in preparing pleadings; and it often requires the decision of a Court to determine this matter; and as a matter of precaution attorneys always make an allegation if there is any question at all as to its being necessary and useful in the case; and in equity pleading, it may be said, that all bills are more or less bills of *discovery* in which the complainant alleges, on information and belief, all of the *supposed* facts and circumstances connected with the case or transaction, for the drawing out *proof facts*, in addition to alleging *pleading facts* or the *ulterior propositions* which are absolutely necessary to constitute a good cause of action or grounds for belief. As a matter of necessity there must be great latitude allowed attorneys and solicitors in preparing bills in equity in regard to materiality or immateriality; and in Chancery pleadings nothing that can be offered in evidence, or throw any light upon the case—that is, anything that may have any bearing on the case, either as a *substantial fact*, or a *proof* fact, cannot be deemed *scandalous*.

See Story's Equity Pleading, Sections 266-70.
1 Van Sant, Equity Pleading & Practice, 103-5.
Malony vs. Davis, 15 How. Pr. 261.
Demthome vs. Demthome, 15 How. Pr. 231.

In England the sweeping doctrine has been established that an attorney is privileged, no matter whether the allegations of the pleading be material or immaterial; and such is also the true doctrine in America where the authorities are all carefully examined and weighed; because to fix a limit would lead to endless confusion and embarrassment; but the matter alleged must have some connection with the case or transaction or throw some light upon it—this is the only reasonable limit that can be imposed. It is true there is some *dicta* in the *obselete*

and overruled case of White vs. Nichols, 3 How. U. S. 266; but this *dicta* never has been followed, and the whole case has long since been set down in the books as an overruled case. See Biglow's Overruled Cases 538, and Greenleaf's Overruled Cases ; but this case has been overruled almost thousands of times in principle, both by the Supreme Court of the United States in Bradley vs. Fisher, 13 Wall, 335; Vogel vs. Gundy, 110 U. S. 311; and a great multitude of decisions of the State Supreme Courts. It has been specially commented on and overruled in Johnson vs. Brown, 13 West Va., 71-112-142; Shelfer vs. Gooding, 2 Jones (N. C.), 175; Marsh vs. Ellsworth, 36 How. Pr. 532; Maurice vs. Worden, 54 Md., 233, and 39 Am. Rep., 384. The doctrine of *absolute privilege* has been sanctioned again and again in all of the States of the Union *except the State of Colorado in the present case.* It would be useless to enumerate the great number of authorities in support of a doctrine which has been undisputed in England for at least three hundred years, and in the United States ever since we have had a Government until the Supreme Court of Colorado *reversed* this whole doctrine. It is only a matter of surprise that all the great judges of both England and America should have been mistaken about this matter for so many centuries.

The opposite doctrine rests for authority solely on White vs. Nichols (3 How. 266). This was not a case involving judicial proceedings, and all that was said by Daniels, Justice, relative to such proceedings, was mere *obiter dictum*, and has been repudiated by a large number of able Courts. (Johnson vs. Brown 13 W. Va. 71, 112-142; Shelfer vs. Gooding 2 Jones (N. C.) 175; Marsh vs. Ellsworth 36 How. Pr. 532; Maurice vs. Worden 54 Md. 233; 39 Amer. Rep. 384.)

The principle of *absolute privilege* has been sanctioned in

New York (Thorn vs. Blanchard 5 John. 508; Allen vs. Crofoot 2 Wend. 515; 20 Amer. Dec. 647; Hastings vs. Lush 22 *id.* 412; 34 Amer. Dec. 330; Gilbert vs. People 1 Denio 41; 43 Amer. Dec. 646; Bailey vs. Dean 5 Barb 297; Warner vs. Payne 2 Sandf. 195; Garr vs. Selden 4 N. Y. 91; White vs. Carroll 42 *id.* 161; 1 Amer. Rep. 503; Marsh vs. Ellsworth 50 N. Y. 309; Perkins vs. Mitchell 31 Barb. 461; Cook vs. Hill 3 Sandf. 349; Suydam vs. Moffat 1 *id.* 462; Edsall vs. Brooks 17 Abb. Pr. 227; Newfield vs. Copperman 47 How. Pr. 87); in Massachusetts (Hoar vs. Wood 3 Met. 193; Rice vs. Coolidge 121 Mass. 393; McLaughlin vs. Cowley 127 *id.* 316; McLaughlin vs. Cowley 131 *id.* 70); in Illinois (Strauss vs. Mayer 48 Ill. 385; Spaids vs. Barrett 57 *id.* 289); in California (Wyatt vs. Buell 47 Cal. 624); in Wisconsin (Jennings vs. Paine 4 Wis. 358; Calkins vs. Summer 13 *id.* 193; Larkin vs. Noonan 19 *id.* 82); in Vermont (Torry vs. Field 10 Vt. 353, 413; Dunham vs. Powers 42 *id.* 1; Mower vs. Watson 11 *id.* 536; 34 Amer. Dec. 704); in New Hampshire (Hill vs. Miles 9 N. H. 9); in Delaware (Gosslin vs. Cannon 1 Harr. 3); in Tennessee (Lea vs. White 4 Sneed 111); in Kentucky (Forbes vs. Johnson 11 B. Mon. 48; Hardin vs. Cumstock 2 A. K. Marsh. 480; 12 Amer. Dec. 427; Morgan vs. Booth 13 Bush 480); in North Carolina (Shelfer vs. Gooding 2 Jones 175); in West Virginia (Johnson vs. Brown 13 W. Va. 71); in Indiana Hartsock vs. Reddick 16 Blatchf. 255; Hutchinson vs. Lewis 75 Ind. 55); in Ohio (Lanning vs. Christy 30 Ohio St. 115. In this case, however, the point was not directly involved or actually decided; Liles vs. Gaster 42 Ohio St. 631); in Iowa (Smith vs Howard 28 Iowa 51; Mass vs. Meire 37 *id.* 97); in Alabama (Lawson vs Hicks 38 Ala. 279); in Maryland (Maurice vs. Warden 54 Md. 233; 39 Amer. Rep. 384; McBee vs. Fulton 47 Md. 403; 28 Amer. Rep. 465); in Kansas (Kirkpatrick vs. Eagle Lodge

26 Kan. 384; 40 Amer. Rep. 316); in Pennsylvania (McMillan vs. Birch 1 Binn. 178; 2 Amer. Dec. 426 and note); in Louisiana (Stackpole vs. Hennen 6 Martin (N. S.) 481; 17 Amer. Dec. 187 and note; Terry vs. Fellows 21 La. Ann. 375; Burke vs. Ryan 36 *id.* 951); in Maine (Barnes vs. McCrate 32 Me. 442; Jellison vs. Goodwin 43 *id.* 287), and in South Carolina (Vausse vs. Lee 1 Hill 198; 26 Amer. Dec. 168; Marshall vs. Gunter 6 Rich. 419).

In England the doctrine of *absolute privilege* has been firmly established for centuries and has been steadily *growing and extending.* In Rex vs. Skinner (Lofft 55) Lord Mansfield said: "Neither party, witness, counsel or jury can be put to answer civilly or criminally for *words spoken in office.*" This is now the settled law of England irrespective of *malice* and irrespective of *materiality.* (Munster vs. Lamb 11 Q. B. D. 588; Wasson vs. Waller L. R. 4 Q. B. 73; Johnson vs. Evans 3 Esp. 32; Hodgson vs. Searlett 1 B. & A. 232; Gibbs vs. Pike 8 M. & W. 351; Seaman vs. Netherclift 34 L. T. Rep. (N. S.) 878; Buckley vs. Wood 4 Co. 14; Cutler vs. Dixon, Dyer 285; Lewis vs. Higgins 62 L. T. 98; Lake vs. King 1 Saun. 131; Padmore vs. Lawrence 11 Ad. & El. 380; Mackay vs. Ford 5 H. & N. 792.)

The same principle is asserted by every writer on the subject. (Odgers S. & L. *p. 182-192; Folkard's Stark. S. & L. Sec. 196-202; Townshend S. & L. 2d Ed. Sec. 221, 222; 1 Amer. Lead. Cas. 5th Ed. *p. 173, 174; 3 Greenl. Ev. Sec. 168; Cooke Defamation p. 148; Desty Amer. Crim. Law 140 k; Cooley Torts p. 211; Weeks Attorneys Sec. 110; Proffatt Jury Trial Sec. 248; Cooley Con. Lim. 4th Ed. *p. 443; 2 Add. Torts p. 933.)

The principle of *absolute privilege* applies with greater force to the case of *material allegations in a pleading* than to any other *occasion.* (Hoar vs. Wood 3 Met. 193; Gosslin vs. Cannon 1 Harr. 3; Shelfer vs. Gooding 2 Jones

(N. C.) 175; Lea vs. White 4 Sneed 111; Forbes vs. Johnson 11 B. Mon. 48; Strauss vs. Meyer 48 Ill. 385; Hardin vs. Cumstock 2 A. K. Marsh 480; Hill vs. Miles 9 N. H. 9; Thorn vs. Blanchard 5 John. 508; Gilbert vs. People 1 Denio 41; Garr vs. Seldon 4 N. Y. 91; Johnson vs. Brown 13 W. Va. 71; McLaughlin vs. Cowley 127 Mass. 316; Warner vs. Payne 2 Sandf. 195; Revis vs. Smith 18 C. B. 126; Henderson vs. Broomhead 4 H. & N. 569; Astley vs. Younge 2 Burr. 807; Rex vs. Salisbury 1 Ld. Raym. 341; Kennedy vs. Hilliard 10 Ir. C. L. R. 195.)

In Johnson vs. Brown (13 W. Va. 71) the Court holds that the case of White vs. Nicholls, in so far as it withdraws *absolute privilege* from judicial proceedings, stands *absolutely alone* and unsupported by any other decision; and this is also the result of *my research.* Besides, this case has been greatly modified, and the principle of it explained in Bradley vs. Fisher (13 Wall. 335.) And the principle of *absolute privilege* has been fully sanctioned in Vogel vs. Gruaz (110 U. S. 311), and in *Ex parte* Cole (1 McCrary 405.)

An allegation in a pleading to be absolutely privileged should *be relevant or believed to be so.* (Lawson vs. Hicks 38 Ala. 279; Lea vs. White 4 Sneed 111; Cooke on Defamation p. 62; Hastings vs. Lusk 22 Wend. 410; Aylesworth vs. St. John 25 Hun 156; Steinecke vs. Marx 10 Mo. App. 580.) The allegation of bribery was material. The allegation that Marsh said he had committed the bribery, he being still the attorney of record in the cause, was also material. This latter allegation, however, is subordinate to the former, and could not be the subject of a separate intent or injury; and it is *not alleged* that it was either malicious or false.

This *absolute privilege* was expressly asserted in the answer, and in words as follows: "This honorable Court has no power or authority in law to call in question the

motives of attorneys and counselors at law in making allegations in a bill in equity in the U. S. Circuit Court or any other Court, when such allegations are material in such suit, and that the same are wholly privileged; that the law of England and the United States has at all times and everywhere wholly exempted all attorneys and counselors at law from all suits, actions, pains, penalties and all forfeitures of any property rights or privileges of any kind or description whatever, and from all harassments and annoyances of any legal nature whatever on account of any material allegations or charges made in any pleading or in argument in open Court in the line of their duties as such attorneys; that such immunity and privileges are extended to attorneys and counselors at law as a matter of public policy, so that they may not be intimidated or deterred from an honest, bold and fearless discharge of their duties in behalf of their clients by any power or authority whatever." These allegations in the answer were still further elaborated and enforced therein.

The fact that a person referred to in a pleading is a judge is wholly immaterial. *We have no privileged class in this country.* Any party to a suit, or third person, irrespective of whether he was, for the time being, holding an office, would, under the principle of this judgment, have the right to appeal to this Court to disbar an attorney in any case where it could be made to appear that there had been or might be a failure of evidence to sustain some allegation, *material and necessary to the right to recover*, which bears hard against such complaining party. To say that an allegation in a pleading, that is material and vital to the right to recover, may become, if not sustained, a ground for an action of libel, or the foundation for a disbarment proceeding, because such allegation affects a man holding a particular office, is to establish one rule of law for one class of men, and another rule for all others. A judge is

just as liable to be assailed when the orderly administration of the law requires it as any one else. All attempts to draw distinctions between the rights of judges and other citizens have heretofore been reproved. (*Ex parte* Cole 1 McCrary 405; Austin's Case 5 Rawle 191; 28 Amer. Dec. 657; *Ex parte* Steinman 95 Pa. St. 220; 40 Amer. Rep. 637; People vs. Green 7 Colo. 227, 244.). In this latter case (pp. 250, 251) the Court distinctly held that if the language of this bill had been promulgated in public speech, or in the public press, by an attorney, he would be answerable *only as other citizens are.* In other words a man because he is a judge is not exempt from criticism, and if the exigencies of a cause require an allegation to be made in a pleading which charges a judge with crime the attorney or party who makes it is liable in no different manner than he would be if the person thus assailed was a private citizen. The fact, then, that Rogers was a judge, and the judge of a State Court, in no manner affects the question of the right to have an attorney disbarred for making a material allegation in a pleading.

The establishment of this right and this practice will be destructive of the *independence and usefulness of the bar.* I assert no new view, for this has been the theory of the ablest judges and Courts of the world for centuries. A discussion of the questions of *public policy* involved will be found in many of the cases already noticed, but I wish to call special attention to a few cases. (Johnson vs. Brown 13 W. Va. 71; Hastings vs. Lush 22 Wend. 410; 34 Amer. Dec. 330; Shelfer vs. Gooding 2 Jones (N. C.) 175; Lawson vs. Hicks 38 Ala. 279; Hoar vs. Wood 3 Met. 193; Strauss vs. Meyer 48 Ill. 385; Larkin vs. Noonan 19 Wis. 82; Kirkpatrick vs. Eagle Lodge 26 Kan. 384; 40 Amer. Rep. 316; Munster vs. Lamb 11 Q. B. D. 588; 23 Amer. Law Reg. 12.)

If no such *absolute privilege* exists, still disbarment should not be the remedy. A party claiming to be injured should be required to resort to a civil action or criminal prosecution for libel. Thus, an attorney, for anything he publishes in Court, would be liable the same as the publisher of a newspaper, but would not be liable to greater penalties, to be enforced by remedies of a more summary character. Under the rule of this judgment every attorney is in constant peril. The perjury of a witness may leave him without evidence to sustain some allegation of fraud or crime, and he must pay the penalty with a *forfeiture* of all that it has taken a lifetime to achieve. It would be a thousand times better that he should be liable the same as any other person to an action for libel. Indeed, the logical result of this disbarment is, that an attorney is liable, both civilly and criminally, in an action for libel, as well as to the additional penalty of forfeiture of an office held for life; which latter penalty no one but an attorney can suffer. The requirement that the attorney must have acted maliciously is *no protection.* Wherever the evidence does not sustain the allegation it will be difficult to disprove the theory of malice.

The same rule applies to a party to an action. Anything that it is material for him to allege is absolutely privileged. An attorney *represents* a party and occupies the same position in respect to privilege. Indeed, parties, attorneys, witnesses and jurors, are all privileged alike, and *absolutely*, and from the same considerations of *public policy*, in respect to anything that is said or written, in the regular course of judicial proceedings, that is pertinent and material to the official act that is being performed. To single out an attorney and say that he may be held liable to a disbarment proceeding, or an action for libel or slander, or both, for all that he may speak or write in

the exercise of his office, but that the rule of *absolute privilege* shall be retained as to parties, witnesses, and jurors would be to establish a distinction that rests upon no principle. Attorneys are just as necessary to the administration of the law as are parties, witnesses, jurors or judges, and they perform just as high, and sometimes far more difficult functions than any of them. If an attorney, every time he files a paper or speaks a word, must take into consideration the question as to how he will fare in the event a disbarment proceeding, or an action for libel or slander, shall be instituted against him, then his *influence*, his *independence*, and his *prestige* are gone. He may believe that a fraud or a crime has been committed; he may feel that it is his duty to denounce it; he may be certain in his own conscience that the person who appeals to him for assistance is the victim of a most heartless conspiracy, but let him beware! He must, before he puts his pen to paper, or utters a word, sit down and coolly calculate all the chances. He must consider whether the opposite party, or some third person, who will be involved, is a judge, or, for some other reason, a man of influence or power; he must consider whether or not there may be some prejudice against him on the part of the Court or judge having power to disbar, or a Court or jury before whom he would have to try a suit for libel or slander; he must consider the state of public sentiment as to his client and the cause of his client; he must consider all the chances as to whether his witnesses may not be bribed or for some other reason induced to commit perjury; he must, in short, consider a thousand things aside from the actual *justice and merits* of his client's cause, for he must bear in mind that the moment he acts, he may have a suit against himself to defend. He is not only liable to an action, but he is also liable to be harassed with a proceeding that can be instituted against none but an attorney.

But it is said, that, before he can be held liable, at the end of a litigation, it must be shown that something that he has averred or said, is both false and malicious. It *will be false* if he does not prove it, and it *will be malicious* unless he can show probable cause; and all this must be determined by Courts or juries that may themselves be *malicious or corrupt*, for in many States the *nisi prius* Courts have power to disbar. But after considering all these chances he brings an action; he is certain that he is *safe*, but while resting in a sense of perfect security "offenc's gilded hand shoves by justice, and the wicked prize itself buys out the law." He awakens to find that his papers have been stolen, his witnesses bribed to confront him with perjury, and possibly his own client corrupted and turned against him. In vain he pleads his *information*. A part of the contract of his debauched informer is to testify that he never gave such information. The result is, that after all his precautions, he is entrapped and slain. He is branded with *malice* and hurled from a profession that may be all he has. But never mind him. He must learn some other business. But how will all this affect those who want their wrongs redressed by a proceeding in Court? The Courts have always said that the lawyer's privilege is given to him as a *protection*, to the end that he may *fearlessly vindicate* the rights of his client. I have just sketched the downfall of the cautious and prudent attorney. What will the next attorney say to such a case? His answer will be that he can bring no suit that reflects upon any one. This would be to license fraud and crime and leave their victims utterly defenseless. This subject is fully discussed in Munster vs. Lamb (11 Q. B. Div.) and in a note to this case (23 Amer. Law Reg. 12) it is said: "Absolutely privileged communications are so well treated and illustrated in the leading case, that further discussion is surely not necessary, than to repeat that the doctrine

has been applied to a very few cases, upon the ground that the public advantage in allowing persons, in the performance of certain duties where *fearlessness* is an essential requisite of a proper performance, to be entirely certain that they will not be exposed to the *annoyance and uncertainty* of a civil action, is more than compensation for the injury done by refusing redress, so rarely required, to individuals injured by an occasional abuse of this privilege; and that, therefore, although in a single case there may have been intentional falsehood, prompted by actual malice, an action will not lie, as a recovery would do *incalculable injury* by being a *constant menace* and check to those whose duties required of them fearless speech on innumerable occasions where there was no malice."

This disbarrment is a new departure. The judicial history of the world will be searched in vain for a case where an attorney has been held liable in a disbarrment for making an allegation in a pleading that is material and necessary.

17.

It makes no difference, however, what this doctrine may be in so far as the case at bar is concerned, as the Supreme Court of Colorado had no shadow of jurisdiction and was acting in direct violation of the laws of Congress and the paramount laws of the land in its disbarment proceedings; and I only refer to the doctrine here to show that there was no shadow *even* of a *cause* of *action* as well as no *shadow of jurisdiction*, power or authority on the part of that Court to hear and determine that matter and enter a judgment of disbarment. The entire proceedings of that Court were wholly without foundation from beginning to end and absolutely void, and the law affords the judges of that Court no protection whatever from personal liability under such false

and pretended judicial proceedings, and especially when the same violate even the Criminal Laws of Congress.

18.

It may be maintained, however, that injury to an attorney in his profession does not come within the above provisions of the Act of Congress; which provides for a remedy to persons for injury to any one in *his person or property*. It may be said that an attorney's profession is not property; but it certainly is within the meaning of that Act of Congress. An attorney realizes a *money* income from his profession, which is property, or the same as property; and to cut off this income and business of an attorney is an incalculable loss and injury to both him and his family.

The old doctrine was that an attorney's profession was simply a privilege that might be taken from him by the Courts for certain causes; but that doctrine has been largely changed, and since, in modern times, it requires many long years of hard and laborious study as well as a large expenditure of money to acquire his profession, and after all that many years of hard labor to build up a practice, and to acquire that experience which is necessary to full success in such an important and responsible profession, our Courts of last resort are beginning to take a more sensible view of this matter, and to hold that a lawyer's profession is *property* and should be protected by law the same as other property.

In *ex parte* Garland, 4 Wall. 397, the Supreme Court of the United States say: "The right of an attorney and counseller acquired by his admission to the bar is not a mere *indulgence*, or a matter of grace and favor to be revoked at the pleasure of a Court or the command of the Legislature."

This case overruled several Missouri cases; Austin vs. State, 10 Mo; State vs. Garesche, 36 Mo. 260; but in the case of State vs. Adams, 54 Mo. 570, the Supreme Court of that State adopted the doctrine of *Ex parte* Garland, 4 Wall. 397, above referred to. In the case of Cummings vs. The State of Mo. 4 Wall. 316, the Supreme Court of the United States apply the same doctrine to lawyers, priests and clergymen. In the case of Admrs. of Byrne vs. Admrs. of Stewart, 3-4—consolidated—Desanssure, South Carolina, the Court say: "That the act, as it affects the defendant, will deprive him of a right, which may fairly be considered as a species of property. It can not be doubted that a man's profession is his *property*; and if a law should be passed avowedly for the purpose of restraining any member of this bar, *who was not a public officer*, from exercising his profession, I should declare such law wholly unconstitutional and void." The above is the substance of what the Court said; but in that case the law was held constitutional because it only prevented lawyers, who were also public officers from practicing. In the case of H. W. Cooper, 22 N. Y. 81-95, this whole doctrine is considered touching the nature of an attorney's right to his profession, and is held to be a *substantial right*, and where an attorney had qualified himself for admission to the bar of that State, and the Supreme Court refused to *admit* him *even*, the Court of Appeals compelled his admission as a matter of *substantial* right, which he could not be denied even by the Court, which was authorized to admit attorneys and counsellors at law under the statutes of that State. Therefore, the old doctrine in regard to the admission or disbarment of an attorney being a mere matter of grace, pleasure or discretion has long ago been overthrown; and it has even been held that after an attorney has once been admitted that the Legislature of a

State can not legislate him out of his profession. That his admission is a judicial act and confers a right in the nature of a vested property right of which he can not be deprived except by due course of law; and for *grave* offenses in *his office* or profession as an attorney and counsellor at law. Therefore, nearly all of the numerous cases found in the books where attorneys have been disbarred, are not the law at present; but I have only mentioned this doctrine here to show that the injury alleged in the complaint in the case at bar is within the Acts of Congress above set out.

19.

The Supreme Court of Colorado in its opinion in the disbarment proceedings against plaintiff in error that it might be doubtful whether that Court had jurisdiction of the subject-matter of said proceedings were it not for the fact that Rogers was a judge of a State Court. This was an astonishing proposition. Such an absurd proposition could never have emanated from any Court in England or America except the Supreme Court of the State of Colorado. It fully illustrates the *legal vagaries* by which the judges of that Court have been governed in this whole disbarment matter. Who is Judge Rogers of the Superior Court of Denver, that the mere incidental mention of his judicial conduct in a suit in equity to which he is not even a party, should change the question as to the jurisdiction of either the State Supreme Court or the United States Circuit Court? Can an *opinion* of the Supreme Court of Colorado, that the judges of State Courts, including themselves, are above all law and above both the Constitution of the State and the United States, which provides that all persons shall be equal before the law? What sort of stupidity or blindness, or what ignorance or infatuation

could have induced the Supreme Court of Colorado to have decided that the judges of State Courts are above all law and all Constitutions and all other citizens; and to have wholly *reversed* the very foundation principles of our Government. It will certainly be a matter of congratulation if any of the great principles of our Government shall survive the *decisions* of the Supreme Court of Colorado.

20.

There can be no question in regard to the jurisdiction of this Court in the case at bar, as the Acts of Congress provide that the United States Circuit Court shall have full original jurisdiction in all actions of this nature growing out of the Civil Rights Bill; and even if the above provisions of the Civil Rights Bill are all unconstitutional still, I maintain that the United States Circuit Court had original jurisdiction in the case at bar, and that this action would still lie against defendants for the reason that plaintiff in error was a sworn officer of the United States Circuit Court for the District of Colorado, and was in the line of his duties as an attorney and counsellor at law, and as a sworn officer of said United States Circuit Court, and as fully protected by the laws of Congress and Constitution of the United States as the judges of said Circuit Court; and that plaintiff in error was just as high above and as far beyond the reach of punishment, or the jurisdiction of the Supreme Court of Colorado as Justices Brewer and Hallet themselves were, and just as much entitled to the protection, when in the discharge of his duties, as said justices. This doctrine is fully illustrated in the recent Nagle-Terry case in California in which this high Court, after the most careful consideration, wholly rescued Marshal Nagle from the State jurisdiction when he had

openly shot down a man who was committing an assault upon a justice of the United States Courts, upon no other ground than that said justice was acting as the judge of the United States Circuit Court for the District of California, and was only traveling to the place where he intended to hold Court, and not at the time near a Courthouse or actually engaged in his official duties except on his way to attend to official duties, and that Nagle was an United States Marshal in the line of his duties. Now, can it be possible that after such a precedent as this as to the protection of a Judge and Marshal of a United States Court, this high tribunal will hold that the Supreme Court of the State of Colorado had a shadow of jurisdiction to inflict such a terrible penalty upon plaintiff in error just because he was in the legitimate discharge of his duty as an officer of the United States Circuit Court for Colorado.

Also examine the leading case of the United States vs. Booth, 21 How. U. S. 512, which holds that the sovereignty of the United States and a State are wholly different and foreign sovereignties, and the laws of Congress and Constitution of the United States high above all State Costitutions, laws or Courts.

It is simply an absolute *legal* impossibility for any State Court, high or low, to exist *as a Court* when acting in violation of the Constitution or any of the laws of Congress, whether attempting to interfere in any manner with any of officers of the United States or any of the United States Courts when in the line of their respective duties as such officers, or in any manner with the administration of justice in said Courts: and the very moment any State Court so acts or attempts to act in violation of the laws of the United States it ceases to be a legal Court and becomes nothing but a judicial mob, and any judgment or decree it may make is simply a *brutum fulmen*. It is

also legally impossible for any department of a State Government or any of its officers from Governor down, to possess the slightest degree of power or authority whatever as against either laws of Congress or the Constitution of the United States. If this were not so there would be nothing but one eternal clashing and conflict of power and authority, and our Government would be a *legal* chaos. This doctrine applies with peculiar force to all of the officers acting under the laws of Congress, and those acting under State Governments. It is simply and utterly impossible for State Courts and State judges, or State officers of any kind or for any State power or authority whatever to have the slightest jurisdiction, power or right to interfere with officers of the United States, and especially with the officers of the United States Courts when acting in the discharge of their duties as such officers, and it is far beyond the jurisdiction or power of State Courts or State authorities of any kind to inflict any pains or penalties of any kind upon officers of the United States Courts; for all of the above mentioned Acts of Congress have been made to prevent the same and to inflict severe penalties upon those who violate the said laws.

If State Courts or State officers could, in any manner, interfere with the Federal officers in the discharge of their duties, and the administration of justice in the Federal Courts, there would also be an endless conflict of authority and endless confusion.

In the light of this undisputed and absolutely necessary law, how supremely contemptible and even *silly* is the contention made by defendants in the case at bar, that because Judge Rogers was a judge of a small State Court, and because defendants, Elbert, Beck and Helm were judges of a State Court of a higher order, that therefore, they are all far above the utmost powers pos-

sessed by the State of Colorado itself; and above all the laws of Congress, both civil and criminal, and forsooth, these wonderful individuals, by virtue of their wonderful offices are above all law, all Constitutions and all Government, and can wilfully and maliciously and defiantly trample upon all laws of Congress with impunity. Unfortunately for them this *silly* defense is all the possible defense they have in the action against them.

It is because these judges and all who aided, abetted and assisted them in their disbarment farce were nothing but a malicious and illegal mob, engaged in committing, in the sacred name of justice, and under color of judicial authority, a most infamous robbery and crime against plaintiff in error, and his associate, and circulating their false and corrupt opinion and decision to the world as a legiti mate and solemn judicial act, in definance of all law and all decency, that plaintiff in error is disposed to use very plain language in this discussion.

To him these judges were nothing but a gang of judicial *pirates*, engaged in robbing him of his honorable and valuable profession, which had cost him much money, and the hard labor of the greater part of a lifetime. And no gang of pirates upon the high seas ever robbed their victims in a more cold-blooded, malicious and infernal manner than these pretended judges robbed plaintiff in error of his profession, and also attempted to rob him of his good name and character for no other reason than that he had attempted, in an honorable and legal manner, to protect a helpless woman and her little children from being robbed of everything they had on earth, in a most infernal manner.

No other judges in the United States, except these contemply, petty, judicial tyrants, would have ever thought of inflicting the terrible penalty of disbarment upon attorneys for a mere alleged contempt in their own Court

for filing a bill in equity containing *real* scandalous matter. A mere reprimand or a short suspension from the bar, or a small fine for the contempt, would have been sufficient. There is no case in the books, in either England or America, where any attorney was ever disbarred, or any severe penalty at all inflicted upon him for such a *real* offense by the Court in which the contempt was committed. This illustrates the character and temper of these petty judicial tyrants. This whole matter is further illustrated by the fact that Joslin, Rogers and Marsh, the parties reflected upon by the bill in equity, could have gone into the U. S. Circuit Court, in the city of Denver, where said bill was filed, and made complaint against plaintiff in error and his associate, H. B. Johnson, before Judge Hallett or Judge Brewer, or both of them; and if both or either had been guilty of any professional conduct which amounted to any contempt of that Court, that was the place to have called the offending attorneys to an account for their misdeeds.

I do not think there is a judge of any Court in the United States more strict and severe in his discipline touching the professional conduct of all the members of that bar, than Judge Hallett, and he is well-known as a judge who absolutely requires and enforces the strictest discipline in this regard; and these men well-knew that if plaintiff in error and said Johnson had really been guilty of the slightest misconduct that that was the place to call them to account; but they also knew that plaintiff in error and said Johnson had only been engaged in the noblest work in which lawyer ever engaged—that of defending or maintaining the rights of an injured and helpless client against the most infernal outrages of wealthy villains, who had plenty of money, and stopped at nothing to secure their plunder, and these men also knew that plaintiff in error and said Johnson were attempting to

maintain the rights of their client on strictly legal lines, and in an open and honorable manner, and that Judge Hallett's Court was no place for them to make any *sham* complaint under such circumstances. Therefore, they resorted to the Supreme Court of the State, which has always shown the most tender and profound *judicial* sympathy for all manner of *official* villians and corruptionists, no matter what the enormity of their conduct. In fact, these judges had turned the Supreme Court of Colorado into an asylum and refuge for all the *foul official birds* of the whole state, who have felt the sore need of a vindication and a good *judicial* whitewashing; and, therefore, it was natural enough that such men as Joslin, Marsh and Rogers should resort to such a Court and avail themselves of the historic tenderness shown to all men of their ilk.

It must be borne in mind that neither one of the justices of the United States Circuit Court, in which it was alleged said complaint was committed, ever, in any manner, attempted even to reprove or condemn plaintiff in error or said Johnson for their conduct as attorneys in said suit, or to show the slightest disapproval in regard to the same. But, on the contrary, Justice Brewer in his opinion in Mrs. Newton's case, and with a full knowledge of the whole matter, expressly vindicates plaintiff in error in that matter, so that here is a full, complete and voluntary vindication of plaintiff in error in the U. S. Circuit Court where said suit was pending; and yet, the terrible penalty of disbarment was *wantonly* inflicted by these judges of the State Court. Was there ever before any thing like it, except in the dark ages?

21.

It may be thought by some that inasmuch as three of the defendants in this action were judges of the Supreme

Court of Colorado, that neither themselves nor their judicial action should be as freely criticised as if they were other persons. I do not, however, understand why this should be so, and especially under the peculiar circumstances of this case. As I understand it they have attempted in an illegal, wrongful and most malicious manner to use all of the judicial power vested in them to strike down plaintiff in error as an attorney and counselor at law in gross violation of every principle of both law and justice and for having lawfully, faithfully and honorably attempted to secure the rights of a helpless client who had been most shamefully robbed of a valuable property, in a manner almost unparalleled in the history of human villainy, and by a band of as vile scoundrels as ever escaped the penitentiary in any State. And in order to make some excuse for doing so, and as they admit by their demurrer, they have *even* stated deliberate and intentional *falsehoods* in their opinion from the judicial bench. They were not satisfied by sheltering and protecting and justifying the men who had robbed his client of everything herself and children had in the world, but under the false and pretended judicial power they went so far as to *rob* her attorneys of their profession, which had cost both of them the labor of the better part of their lives, and which is now worth many thousands of dollars to themselves and families; and this, too, for no shadow of offense known to the law, and perhaps, for one of the noblest acts of their whole lives, in trying to prevent, in a legal manner, a most infamous outrage upon a helpless client. But they not only *judicially robbed* her attorneys of their profession, but they attempted to *stamp* them as unfit and unworthy to be members of the bar of the State of Colorado; and although their attempt in this last regard has wholly failed and has been turned with terrible effect upon their own heads, yet at hands of said attor-

neys they deserve no forbearance or consideration whatever. But is it true, that under any circumstances, it is the duty of an attorney to hide and secrete the ignorance, incompetency or corruption of the judge or judges of any Court in which he may practice. Must he become *particeps criminis* either legally or morally to the crimes and corruptions of judges of Courts before which he is compelled to practice? As our judges are now elected by the people, is it not the duty of attorneys and all other persons to expose the ignorance and unfitness of judges for their high and responsible positions, so that the people may fully understand whom to select for such positions? In the case of Stewart v. the People, 3 Scam., the Supreme Court of Illinois say: "That when the judiciary is elective, there is the same responsibility in the judicial department as exists in the legislative and executive departments, to the people for the diligent and faithful discharge of all duties enjoined by law upon it; and the same necessity exists for public information with regard to the character and conduct of those entrusted to discharge those duties in order that the elective franchise shall be intelligently exercised." It was also said in the same case, in speaking of the power of Courts to punish for contempt: "That libels upon the Courts having no direct tendency to interfere with the administration of the law, that it does not seem necessary for the protection of the Courts in the exercise of their legitimate powers, that this power, so liable to abuse, should also be conceded to them. It may be so exercised as to destroy that moral influence which is their best possession until finally the administration of justice is brought into disrepute.

"Respect to Courts cannot be compelled. It is the voluntary tribute of the public to worth, virtue and intelligence, and while they are found upon the judgment seat,

so long and no longer, will they retain the public confidence."

In *Ex parte* Steinman, 95 Pa. St. 220, the Supreme Court of that State say: "No class of the community ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance at the Courts. Hundreds of those who are called on to vote never enter a Court House, or if they do, it is only at intervals as jurors, witnesses or parties. To say that an attorney can only act or speak on this subject under liability to be called to account and be deprived of his profession and livelihood by the very judge or judges whom he may consider it his duty to attack and expose, is a position *too monstrous* to be entertained for a moment under our present system."

All of these authorities, together with many more to the same effect, from the highest Courts in the land, were presented and read to these Colorado judges on said disbarment trial, but were never noticed at all by said judges, for the reason that they had pre-judged the whole matter long before the trial commenced; and both respondents were prejudiced and foredoomed without the slightest regard for either law or justice. The whole trial was nothing but a judicial mockery and farce.

22.

One Court, *even* of the same State, cannot punish for a contempt committed in another Court, much less can a State Court of any kind assume jurisdiction of, and punish for a contempt of any kind or nature committed in a U. S. Circuit Court, which is a foreign jurisdiction, and where the Constitution and laws of Congress absolutely

prohibit all departments of a State Government, and all officers of State Governments, and including all officers and judges of State Courts, from interfering with the officers and the administration of justice in the U. S. Courts.

The following authorities are right in point, and show that one Court in the District of Columbia had no jurisdiction to punish for a contempt committed in another Court in the same District. These authorities settle the whole case fully and completely in every regard, and show the absolute want of jurisdiction on the part of the Supreme Court of Colorado in the case at bar.

Ex parte Bradley, 7 Wall., 364.
Bradley v. Fisher 13 Wall., 335.

23.

All attorneys and counselors at law duly admitted or *even appearing* and attending to business in a U. S. Circuit Court, or any U. S. Court at all, are exercising authority under the laws of the United States.

McGrine v. Carr, 3 Wall. 382.
Bush v. Calbath, 3 Wall. 334.
Mullinger v. Hartupe, 6 Wall. 258.
Mining Co. v. Boggs, 3 Wall. 304.

That attorneys and counselors at law are officers of said United States Courts, and as necessary to the administration of justice in the same as the clerk, marshal, or even the judges themselves, and that if the said Supreme Court of said State can punish and interfere with the attorneys of said United States Courts for discharging their duties to their clients in the same, said Supreme Court, of said State, can also punish the other officers, and even the judges themselves, for discharging their duties in said

United States Courts, and at any time wholly obstruct the administration of justice in the same, in gross violation of all the above mentioned laws of Congress.

24.

The Supreme Court of Colorado has no power *even* under the statutes and laws of the State of Colorado to disbar plaintiff in error *wantonly* and *arbitrarily*, nor unless plaintiff in error had been guilty of *malconduct* in his office as an attorney at law.

That section 73, p. 136 of the General Statutes of Colorado, of 1883, provides: "That the Justices of the Supreme Court, in open Court, shall have the power, at their *discretion*, to strike the name of any attorney or counselor at law from the roll for *malconduct in his office*."

There is no power or *discretion* here to strike an attorney's name from the roll, except for *malconduct* in his office. When an attorney has been convicted of *malconduct* in his office then the Justices of the Supreme Court may exercise their discretion in striking his name from the roll. Section 75, p. 137, provides: "That every attorney, before his name is stricken from the roll, shall receive a written notice from the Clerk of the Supreme Court stating distinctly the grounds of complaint or charges exhibited against him, and he shall, after such notice, be heard in his defense, and be allowed a reasonable time to collect his testimony and prepare for his justification," etc., etc.

It will be seen that the Supreme Court of Colorado cannot in a wanton, arbitrary and tyrannical manner strike attorneys from the roll and disbar them for *nothing*.

That even if plaintiff in error had alleged scandalous and impertinent matter in said bill in equity, in the said United States Circuit Court, it would have constituted

nothing but an ordinary contempt of said Circuit Court, for which that Court alone had power or jurisdiction to fine or imprison plaintiff in error; but not to disbar him under the laws of Congress. (See section 725, page 137, Revised Statutes of the United States, 1878; and, also, *ex parte* Robinson, 19 Wall., 505.)

25.

It may be urged that there is a disposition to do these judges injustice, but such is not the case. Not one of these judges was able to make his *salt* at the practice of his profession, and they were elevated to their high judicial position where they each get a salary of $5,000 per year, besides each being furnished free with a good stenographer and type-writer, and all three do not do as much work or decide as many cases during a year as one average judge would do. The State also pays three commissioners to assist them, each, a salary of $5,000 per year, and still nothing is done, and the docket more than three years behind. Every decision made by this Court costs the State from $300 to $500 at least, as the State pays $30,000 in salaries alone to the three judges and three commissioners, being about the amount paid by the great State of Pennsylvania, which has over 5,000,000 of people and an endless variety of business and manufacturing affairs, and every conceivable variety of legal questions, whereas the whole State of Colorado only has about 400,000 people—about as many as one big county in Pennsylvania, and her commercial, manufacturing and business transactions are very limited, and there is almost no variety of litigation. The Colorado people and American people everywhere are disposed to treat all Courts and all judges of Courts with the greatest deference and respect; and if there is a place in the civilized world where the

people would almost worship an *able* and *honest* judge it is in Colorado. But the elevation of so many ignorant, incompetent and corrupt men to judicial bench has brought the whole administration of justice in the State Courts into shame and disgrace, and the people have lost all confidence in the Courts. It is generally known that any man who has a little money can escape all punishment, no matter what crimes he may commit or how strong the evidence may be against him; and this also applies to the multitude of *official* crimes, and to that large class of wealthy men in Colorado, who almost openly perpetrate great frauds and robberies upon innocent and unsuspecting persons as in Mrs. Newton's case.

Of course, none of the *strictures* or criticisms in this Brief and Argument are intended to apply to any of the new or old judges upon either the Supreme bench or any of the trial benches of the State, who are honestly and faithfully trying to discharge their important and responsible duties as such judges or as commissioners of the Supreme Court. All such deserve the confidence and respect and the encouragement not only of all the members of the bar, but of all the people; and no men in the State know the truly lamentable condition of judicial affairs better than all such judges; and none deplore the sad condition of the administration of justice in the State more than they do.

26.

It is not deemed necessary at all to take up the assignments of error *seriatim*, as the questions raised by the demurrer are well defined, and the *crucial* questions in the case have already been clearly brought out. The Court below wrote no opinion and said but little when the demurrers were decided, and seemed to prefer to have the questions all referred to this high tribunal for its decision,

so that there is no occasion for a direct criticism of the opinion of the Court below.

The case is certainly one of great interest and importance to both the judges of Courts and members of the bar throughout the whole country, and affords this high tribunal an opportunity to render an opinion of immense importance, no matter which side it may favor.

27.

It must also be borne in mind that said judges acted with their eyes open throughout all of said disbarment proceedings, as plaintiff in error and the said H. B. Johnson both protested against all of said proceedings, both in their written answer aud in open Court, and also prepared elaborate printed briefs and arguments in said proceedings and cited multitudes of the very highest authorities touching all of the legal points or questions involved; but said judges wilfully and *corruptly* defied all law and all authorities, and all reason and argument, and all protests in behalf of Mrs. Newton, and wilfully shut their eyes and rushed on, in their judicial madness, to their monstrous and *corrupt* judgment of disbarment, and six weeks afterwards, still not satisfied with their first grossly malicious and *corrupt* opinion, which they based on an overruled case as aforesaid, presented to them as a *joke*, and which plaintiff in error assured them, at the time, had no application at all to the case, and that there was a multitude of cases against it and overruling it, they wrote a new opinion still more malicious than the first, as above stated. It may here be stated that plaintiff in error made no motion for a re-hearing, because he deemed it wholly useless. Himself and Johnson had prepared the most careful and elaborate briefs and arguments and also argued the matter orally; but said judges

did not even so much as notice or mention any of the multitude of authorities offered by them upon the argument; but wilfully shut their eyes to all law and all arguments. It may now be asked what induced or could induce three judges of the Supreme Court, of a new and flourishing State, to commit such a high-handed judicial outrage? Bnt in their opinion there was simply an *overpowering* and absolute necessity for doing so. Their reckless judicial conduct grew out of the lamentable fact that in Colorado it is difficult to get lawyers of any legal ability or character to accept judicial positions, and even if they were willing, they cannot obtain nominations from *corrupt* political conventions, except on terms and conditions to which no honorable man will submit, and the result is that not only second and third rate lawyers, but even *tenth* rate lawyers, who are utterly unable to make a living at the bar, are elevated to judicial benches, and Colorado being a rich mining State where there was and still is a great deal of mining litigation, involving millions of dollars, and much of which comes before these *ignorant* and *corrupt* judges, and it is even a *historic* fact that all official life in Colorado is fearfully corrupt—in fact, almost openly and defiantly so, and for the last eight or ten years in nearly all large and importants suits *justice is simply bought and sold*, and our Supreme Court well knew that if it absolutely required the whole judicial power of the State to do so, that they must *suppress* at once all efforts to expose any of these corrupt Courts, and, if possible, make such an example of the first attorney or attorneys who should attempt an exposure of judicial *corruption* and *ignorance*, that no other attorney in the State would ever have the temerity to attempt another exposure. This is the only possible explanation, and the whole explanation of this remarkable case. And every thing done in this matter by said judges was wilfully and

intentionally tyrannical, oppressive and grossly corrupt from beginning to end, as well as *criminal* under the laws of Congress. I have a right to use this plain language, for they admit it all by their demurrer to the amended complaint in the case at bar. If said judges can make any other explanation of their judicial conduct in this whole matter without convicting themselves of being demented or judicial idiots, I should be extremely glad to hear them do so. They are now forced to this *damning* alternative. But no plea of *insanity* or *idiocy* can help them in this case, except as a *moral* matter. But they have an infernal method in their madness.

If they have the courage to attempt to reply to this argument in the face of the admitted facts by their demurrer and the solemn record facts in their own court behind their demurrer, and which record they made themselves, I am inclined to think they will succeed in demonstrating to this high tribunal that the alternative stated above is correct! Let them either deny the facts in the face of their demurrer, or explain them if they can!

28.

This high tribunal may think the above language too severe when applied to men who have been judges of a Supreme Court of a State; and it is true that under ordinary circumstances respect for the high positions these men have so shamelessly disgraced, might require, as a a matter of good taste, more moderate language; but I hold that there is no official corruption in the world so *dangerous* and so *infamous* as judicial corruption, and no *tyranny* so odious as judicial *tyranny*, and no tyrants so despicable as judicial tyrants! And it makes no difference as to the nature of the corruption, whether it be for a money consideration, or for any other selfish and un

lawful purpose! Is it not worse even for judges to act corruptly and violate their official oaths, and commit willful and corrupt perjury on the judicial bench by acting with a *corrupt partiality* in order to shelter and whitewash corrupt judges, than to take a money bribe in a particular case or cases? Also, decisions made in consideration of outside political influence, which may benefit the judges making them, and which disregard all law and all justice, and shock both reason and conscience? All such judgments and decisions are just as corrupt and as dangerous as if bought for money itself!

Therefore, these judges admit by their demurrer, that they did commit willful and corrupt *perjury* upon the judicial bench, in addition to all their other corrupt and criminal conduct admitted by said demurrer; and when judges of a Supreme Court of a State come into a U. S. Circuit Court and *solemnly* make such *damning* and *infamous* admissions in order, if possible, to escape by the mere skin of their teeth, and upon a mere technicality, a pecuniary responsibility for their bad conduct on the judicial bench, it seems to me that there can be no language too strong, and no *pen*, although dipped in *fire*, too severe to characterize judges, who would thus prostitute their high and sacred positions for such infamous purposes! Certainly, they have wholly absolved plaintiff in error, and all others, from the slightest degree of respect, notwithstanding the high positions they have thus disgraced. In fact, I think of all criminals on earth, there are no others so odious, so infamous and so dangerous, as corrupt men on judicial benches! Their powers and opportunities for the commission of wrong, injustice, oppression and judicial robberies, are absolutely appalling, and almost without limit or fear of exposure! Therefore, when there is no question as to their guilt, as in the case at bar, the whole power of the

English language might, with propriety, be exhausted in properly characterizing their conduct!

It must, also, be borne in mind that it is not within the range of human probabibity, that these judges would ever have filed a demurrer to said complaint, which contains such damaging allegations against them, if it had been at all possible for them to have disproved said allegations, or any considerable part of the same, and it is also evident that if they had really thought any of the damaging allegations were not material and well pleaded they would have made a motion, in the Court below, to have had the same stricken out before filing their demurrer. The stubborn fact is, that all of the allegations of the complaint are true, and there is a great deal of purely proof matter of a like nature that is also true; and, unfortunately for them, the proof is all matter of record and evidence reduced to writing on the hearing before them in the disbarment trial, except the first opinion written by them, which they afterward ordered the clerk of their Court to destroy; but several full copies of the same were obtained before the clerk destroyed the original! A full copy of Mrs. Newton's bill in equity, in the U. S. Circuit Court was filed as a part of the petition for disbarment, which showed upon its face that the suit had been originally commenced in the U. S. Circuit Court, and, also, showed upon its face that the allegation that Joslin had obtained his judgment in Rogers' Court by bribery and corruption was a *material* allegation, and it also showed that plaintiff in error and said Johnson were acting as attorneys and counsellors at law in the said U. S. Circuit Court, and under the protection of said Court, and under the protection of the laws of Congress, and wholly beyond the jurisdiction and reach of the Supreme Court of Colorado, as to their official conduct as officers of the said U. S. Circuit Court; and

these judges also knew, or ought to have known that the said U. S. Circuit Court was a *foreign* tribunal as to the Supreme Court of Colorado, and that said Supreme Court might, with the same propriety, have assumed jurisdiction of an alleged contempt committed by a solicitor in filing a bill in a court of equity in Canada, or in England; and these considerations were all urged upon these judges at the disbarment trial and in printed briefs and arguments, but were not noticed at all by them!" It, also, fully appeared from said bill why Mrs. Newton had filed the bill in the U. S. Circuit Court. That after Joslin had obtained his corrupt judgment in Rogers' Court, the stenographer alone demanded $300 for an extension of his notes of the evidence, and that other exorbitant demands were made by the officers of that Court for a copy of the record, and all the costs of that suit were demanded in order that she might carry her case to the said Supreme Court; and that Mrs. Newton had been robbed of everything she had in the world by Joslin and his co-conspirator, Lamb, and was compelled to sew for about seventy cents per day to support herself and five children, and a helpless invalid husband, as well; and that the only thing she could do was to obtain leave from the judge of the U. S. Circuit Court to prosecute her suit as a poor person, and obtain relief if possible; so that it fully appeared on the face of the bill why a remedy was sought in the U. S. Circuit Court, and that it was the only possible remedy, under the circumstances, for a grossly wronged, injured and helpless woman, who had been robbed of a fortune of 640 acres of land near Denver, now valued at over one million dollars, for absolutely nothing at all; and by means and crimes that an ordinary highway robber would have spurned to resort to! Certified copies of the indictments found by the Grand Jury of Arapahoe County, Colorado, against

said Joslin and Lamb, showing the *felonious* manner in which Joslin and Lamb had obtained her property by the commission of two distinct felonies under the criminal statutes of Colorado, and that all of the facts constituting the said felonies were actually confessed and sworn to by both Joslin and Lamb on the trial before Rogers, because it was impossible for them to deny under the circumstances; and yet, Rogers decided that criminals had a right to hold money and property obtained by the commission of felonies and to reap the fruits of their own crimes! All of this fully appeared on said disbarment trial, and said judges were referred to the report of the trial of Judge Barnard of New York before the most august Court that has ever assembled in the United States, except the august tribunal that tried the impeachment of Andrew Johnson. The Court that tried Judge Barnard was composed of the senators of the State of New York and the judges of the Court of Appeals of that great State; and Barnard was convicted of about twenty-five separate charges without the first particle of evidence that he had ever received one dollar or one cent in money or property as a bribe; and he was convicted wholly and rendered infamous forever under the rule established by that august Court, that whenever a judge of a Court renders a judgment or makes a decision that shocks the reason and conscience at once, and that any ordinary lawyer could say was wholly wrong without hesitation, that such decision or judgment is of itself sufficient to convict the judge rendering it of corruption; but all of Judge Barnard's decisions were far short of the enormity of this decision rendered by Rogers, and that, too, on undisputed facts! The very most that the Supreme judges could say in defense of his decision, in their elaborate opinions, was that *it was not a monstrous* decision! and even to say

that, they had to state a deliberate falsehoood! But a decision might not be a *monstrous* decision and yet be sufficiently monstrous to shock the reason and conscience, and to enable any good lawyer to say at once it was wrong! To illustrate my views: Suppose a robber in the street meet a man and put a revolver to his breast and demand his money and should succeed in getting ten thousand dollars, and the man robbed afterward finds out who the robber is, and sues him for his money, and the robber goes upon the witness stand and swears that he did rob the plaintiff of $10,000; and the judge of the Court should decide that the plaintiff could not recover the $10,000, and should render judgment against the plaintiff for costs of suit, would not such a monstrous judgment shock both reason and conscience, and be conclusive proof that the judge was either *corrupt* or *insane?* And should not a Court of equity set aside such a judgment?

This illustrate Mrs. Newton's case exactly.

I have referred to these matters for the following reason: When Mrs. Newton's case came on for trial in the U. S. Circuit Court some time after the disbarment of the plaintiff in error, and some time after plaintiff in error had commenced the suit at bar, both Justice Brewer and Judge Hallett sat at the hearing. The defendant to the bill, J. Jay Joslin, was allowed to put Judge Rogers on the witness stand and have him testify that he did not receive a bribe, but Justice Brewer wholly refused to allow Mrs. Newton's solicitor to cross-examine Rogers simply because Rogers was a judge of a Court, which was another most remarkable *privilege* extended to a witness because he was a judge of a Court, and which was a great injustice to Mrs. Newton; and all of which Justice Brewer will no doubt remember; and defendants and Rogers had succeeded in intimidating by threats and otherwise the

deputy sheriff and other witnesses who were connected with Rogers' Court, which together make Justice Brewer's refusing to allow a cross-examination of Rogers, Mrs. Newton had a poor opportunity to fully make out her case. I have since thought a good deal about this ruling of Justice Brewer's, and am more and more satisfied it was erroneous, as not even the King or Queen in England, or the President of the United States if placed as a witness against a party as Rogers was against Mrs. Newton and allowed to testify *dead* against her, and then wholly refuse her the invaluable right of a cross-examination simply because Rogers was a judge of a small Court, was erroneous, and especially so, as it would have been perfectly impossible for Rogers to have explained his judgment, and he would soon have convicted himself to the satisfaction of any impartial Court. But notwithstanding all that, the whole character of the judgment rendered by Rogers was shown by the testimony, and enough appeared to show that it was a judgment which shocked both reason and conscience; and Justice Brewer took the matter under advisement, and after some weeks sent back a written opinion in which he held that the evidence was not sufficient to show that the judgment rendered by Rogers was corrupt; but in which he fully vindicated the conduct and motives of plaintiff in error, as Mrs. Newton's solicitor.

This opinion was published in some of the law periodicals—but I do not know where to refer to it, but as defendants will no doubt refer to it, I most respectfully request a careful examination of it by this high tribunal. Plaintiff in error learned afterwards that the said judges of the Colorado Supreme Court and Judge Rogers and many of their friends had made personal appeals to Justice Brewer before the commencement of said hearing, and had managed to place in his hands the false and

malicious opinion of said judges in said disbarment proceedings, and had said and done everything in their power to deceive and mislead Justice Brewer touching said suit in order to prejudice Justice Brewer against plaintiff in error, and all of which damaged Mrs. Newton's case. They no doubt made the impression upon Justice Brewer that this whole affair was but an ordinary difficulty between two members of the bar and these judges, and appealed to Justice Brewer to act as a peace-maker, and assured him that the supreme judges had acted in good faith in disbarring plaintiff in error and said Johnson; and that the whole matter, if erroneous, was a mistake, in order to deceive Justice Brewer touching the whole transaction, and no doubt all of this had its intended effect, to some extent, on the mind of Justice Brewer in making his decision against poor Mrs. Newton, and as she was not able to appeal the case, the robbers finally got all of her property.

I would now most respectfully suggest that if Justice Brewer himself had been disbarred in the manner and in the infernal tyrannical spirit and grossly unjust and illegal manner, that plaintiff in error and Mr. Johnson were by these self-confessed, malicious and corrupt judges; and if Justice Brewer's own wife and children had been robbed in the infamous manner that Mrs. Newton and her children were robbed, first by Joslin and Lamb, and then judicially robbed by Rogers, he, Justice Brewer, would not have had such tender sympathy for these judges and so little sympathy for Mrs. Newton and her children, and her attorneys so shamefully robbed of their profession. Plaintiff in error was also informed that said judges and their attorneys and friends, also attempted by the most malicious falsehoods, to prejudice Justice Brewer against plaintiff in error, falsely asserting that he was in

the habit of denouncing judges of Courts without just cause and the like.

When Justice Brewer sent in his opinion Judge Hallett presented it in open Court, and stated that he wholly dissented from the whole opinion, except that he concurred in the dismissal of the bill on *technical* grounds, but not for any of the reasons mentioned in Justice Brewer's opinion. Judge Hallett understood Colorado judges and the corruption of Colorado Courts much better than Justice Brewer did.

One object of Mrs. Newton's bill was to enforce a vendor's lien against the property, and Judge Hallett held that under the peculiar circumstances a vendor's lien did not attach, and therefore he concurred in the dismissal of the bill.

Inasmuch as Justice Brewer is now one of the justices of the Supreme Court of the U. S., it was deemed proper to refer to his former connection with one branch of this matter, and make the above explanation from my information and standpoint; for I only learned much of what is said above after Justice Brewer had rendered his opinion; but I wish to say that I entertain no doubt that Justice Brewer acted from the purest and kindest motives towards all and with the view of settling what he was led to believe was an ordinary quarrel between members of the bar and the judges of the Courts; but I most earnestly protest against this view of the case. A most malicious wanton, monstrous and infernal judicial outrage has been perpetrated on plaintiff in error, and the whole judicial power of the State turned against him without the shadow of a legal excuse or pretext, and everything within the power of these apparently maddened, infuriated, revengeful and corrupt judges could do with all the judicial power invested in them by law, and also with all the false power they could usurp, they have attempted in the most

cruel and persistent manner to crush and ruin plaintiff in error and his family in the manner alleged in said complaint; and against both light and knowledge and against the most earnest but respectful protests of plaintiff in error; and I now protest against their coming into this Court of last resort and pretending that they did not intend to do any thing wrong, and that, too, in the face of the solemn admissions made by their demurrer. This is no ordinary matter, and no ordinary wrong and injury has been done; but a grave and terrible wrong has been done the plaintiff in error, the aggravated nature and enormity of which demands the most careful consideration of this high tribunal.

Of course, nothing that is connected directly with the hearing and decision of Mrs. Newton's case can affect the legal questions in the case at bar, and reference has only been made to that case, and to Justice Brewer's connection with the same, because he is now a member of this high Court of last resort, and to guard against any *bias* or *prejudice* which may still exist in his mind in favor of said judges, and caused by false information given behind the back of plaintiff in error by these judges and their attorneys and friends, if plaintiff in error has been truthfully informed as to this matter.

29.

As above stated, this is not an ordinary difficulty between members of the bar and judges of a Court. It is a part of a terrible struggle which has been going on in the State of Colorado for the last ten years between the Courts and members of the bar, and lately including editors of leading papers, and grows out of a general plan on the part of the Courts to suppress and crush out all efforts on the part of honest and fearless lawyers, and editors of pa-

pers, who may even attempt to expose and bring to light in any manner the gross corruptions of many of the State Courts, and to expose and criticise the ignorance and incompetency of many of the judges of said Courts; and, therefore, all of the members of the Colorado bar, and many of the judges and the editors of papers and all of the people who are interested in a pure and efficient administration of justice in the State. This whole contest has been brought about by a most relentless and tyrannical exercise of the arbitrary power vested in the Supreme Court of Colorado to punish for contempts and to disbar attorneys; or I should say by the gross and tyrannical abuse of this power, for the Statutes and Code of Colorado limit this arbitrary power as much as it is generally limited in other States; but the Supreme judges of Colorado declare that they are not bound by any statutory limitations of this power, and absolutely trample upon the Statutes of their own State in this regard, as their decisions on this subject all show, and they openly declare their power to do so, and boldly proclaim their unlimited power to disbar attorneys for alleged contempts or for *no cause at all* at their pleasure, as shown by their opinions in the different cases hereafter referred to.

In the case of the People v. Hughes, 5 Colorado, p. 496; People v. Teller, 4 Colo. 180; Liddicvat v. Treglown, 6 Colo. 47, they disbarred a leading attorney because his client made an affidavit for a change of venue, and as the law requires the facts to be stated in the affidavit, his client alleged in good faith and on information and belief that the other party had corrupted the judge, which he had a right to allege, and it was the attorney's sworn duty to do so for his client or retire from the case, yet the Supreme Court disbarred the attorney for doing his plain duty, as it was the fault of the law that compelled him to do so. But could there be any better reason for asking a change?

Should any man be compelled to try his rights—important rights—before a judge whom he has reasons to believe and does believe, has been corrupted by his adversary?

Another prominent attorney is at present arraigned before this Court for disbarment for protesting against alleged corrupt action of another trial Court. But a short time since two editors of a leading paper in the city of Denver were each fined $300 for criticising the conduct of a trial judge, when it was admitted by the Supreme Court that said judge did not have a shadow of jurisdiction. This, also, grew out of charges of official corruption on the part of all the officers of the whole State in robbing the State of tens of thousands and even hundreds of thousands of dollars, which robberies were not at all denied, and could not be, but the fining for *contempt* was all in the interest of the robbers. This Court never punishes *corruptionists* and *official robbers;* but it never loses an opportunity to punish anyone within its reach, law or no law, who exposes *corruptionists* and *official thieves.* This is notorious and historic. Plaintiff in error was also formerly disbarred by the same Court for a *constructive* contempt in having an ordinary dispute with a judge of a trial Court in the streets of the city of Denver in regard to an article in a daily paper, in which an insulting attack was made on plaintiff in error, and in which dispute a mere reference was made to a *contempt* matter which plaintiff in error had defended in the Court of said judge, and which had wholly ended three months before that time, and which could not possibly be a contempt under the laws of Colorado, but these same judges trampled all law under their feet, the same as they have done in the case at bar and also in their opinion stated absolute falsehoods as in the case at bar. As these matters were all under State law, as a matter of course there was no remedy, and all had to submit to their judicial tyranny and outrages;

but not satisfied with these acts of tyranny against which their victims had no legal remedy, like a great *judicial Devil Fish*, they attempt to extend their infernal arms over into the United States Circuit Court, into a foreign jurisdiction, for more victims, and think they can still defy all law and commit additional acts of tyranny with impunity, and therefore arraigned H. B. Johnson and plaintiff in error for doing their duty as attorneys in that Court, the same as they had been arraigning and disbarring attorneys for doing their duty in the State Courts. It is a matter of surprise that the U. S. Circuit Court did not at once arraign them all before it, for the gross insult and contempt committed against it. But no one made complaint, and their stupid assurance and contempt passed without just punishment.

It must be borne in mind that these judicial tyrants never once attempted any of the usual and ordinary punishments for any of these falsely alleged contempts, such as a proper reprimand, a small fine, or a temporary suspension, or anything of the kind; but each and every victim of their infernal, arbitrary and tyrannical power had to suffer the extreme and terrible penalty of disbarment! No pity, no mercy, no law, no justice with these contemptible tyrants, who had become absolutely *drunken* with their *unlimited* and *arbitrary* power, and no man is so *drunk* as a petty tyrant *drunken* with his power!

These statements have been made to bring before this high tribunal the true nature and importance of the case at bar. Its object is not to recover money, except as a necessary incident, but to check this judicial tyranny and oppression, and to assert and vindicate the honor, independence, usefulness and manhood of the members of the Colorado bar. I maintain that the Colorado public has a deep and lasting interest in the result of this case. This high tribunal can see from the very nature of this

case that there must be something terribly wrong! But it may be said that impeachment before the Colorado Legislature is the proper remedy. This suggestion would be considered a *joke* in Colorado. It is a matter of open, notorious and undisputed history in Colorado, that members of the legislature are bought and sold almost as openly as Texas steers. About the only difference is that a Texas steer costs about three times as much as a member of the legislature. It is also a matter of shameful history that the last legislature of Colorado absolutely stole and carried away with them several thousand dollars' worth of desks and the like. It will therefore be seen that the members of the legislature are too busy selling themselves and taking bribes to impeach judges of Courts for the same thing, or other forms of judicial corruption! No one in Colorado will deny this statement, and it is often ex-members of this legislature who are made judges; such as this man Rogers in whose Court all of this trouble originated. It would be no exaggeration to say that the members of each session of the Colorado legislature while in session commit more crimes and felonies than all the other criminals in the State! No man in Colorado not a member or ex-member of this honorable body will deny this. This statement is made because it is historic and undisputed, and throws much light on the remarkable case at bar; because I feel that to those in other parts of the country this whole affair must seem incredible!

Was there ever before in England or America such an *awful* arraignment made of the judges of the Supreme Court of a state as is made against these judges of the Supreme Court of Colorado in the amended complaint in the case at bar? And these shameless judges occupying or having occupied this exalted position coolly confess in a solemn judicial proceeding that they are all true? Suppose, however, that one-half or third of these charges,

or even one of them be true, and that would include willful and corrupt *perjury* and violation of their official oaths, what sort of men are these to occupy such an exalted judicial position? If but one of these voluntarily and solemnly confessed charges be true, certainly these men are better fitted for the penitentiary than to be occupying seats on the Supreme bench of a State! But these shameless judges coolly and deliberately admit and confess these infamous crimes that almost make an honest man shudder to contemplate, for the sole purpose of escaping *financial responsibility* for the same! They have never in any manner attempted even to clear themselves of these damning charges, but come into Court and admit their guilt, but say they committed these crimes as judges of a Supreme Court, and in the exercise of high judicial functions, therefore they cannot be made to respond in damages! That is, in order to escape paying damages, they add, I might say, a thousand times to the enormity of their *moral guilt!* "Oh, shame, where is thy blush!"

If I had been one of these judges I would not have gone into the U. S. Circuit Court, or into any other Court, and admitted in a solemn judicial proceeding that I had committed such revolting crimes on a supreme judicial bench, and in violation of my own oath and the sacred trust which had been confided to me, for the whole State of Colorado with all of its mountains of silver and gold! No such crimes can be committed anywhere else on earth except upon a judicial bench; and there is no infamy like judicial infamy, and no honor so solid and enduring as judicial honor! But what was all this to them? What do they know about either honor or shame? There is something so revolting to the mind in the idea of judges of such a high and important tribunal, absolutely betraying their sacred and even holy trust, and *polluting* the very

sanctuary of justice itself, and turning her temple into a den of thieves!

30.

SPECIFIC ANSWER TO THE MOTION TO DISMISS BY DEFENDANTS IN ERROR.

This is a most remarkable motion, in that it seeks to take the case entirely out of its place on the docket and have the whole case tried or heard on its merits upon a mere motion. If this can be done in the case at bar, then it can be done in every other case on the whole docket; and if so this honorable Court will no doubt soon be crowded with similar motions in other cases.

The most remakable matter, however, in regard to this motion is the principal ground or reason on which the same is based. There are only two reasons assigned for this motion, and the first is a mere technical reason touching the time of filing the record in the clerk's office, which has nothing in it, as will be shown hereafter, and a matter in which the attorney for defendants in error himself evidently has no confidence; so I shall first consider briefly his second ground on which he seems to place his whole reliance. This is nothing more and nothing less than the full and complete hearing of the whole case on its merits, and about two years before it can be reached on the docket. Of course, plaintiff in error would have no objection to this saving of time if this Honorable Court could, upon this motion, render a final decision in his favor if it should consider him entitled to the same; but that would simply be advancing the case. The learned attorney, who has filed this remarkable motion, seems to be *almost* as able a lawyer as any one of these Colorado Supreme Judges. His motion in this regard seems to be a very poor re-hash of their remarkable opinion in the disbarment case; and he seems to be about as compe-

tent as they were to comprehend the very grave legal questions of this case.

This whole motion seems to be a wretched affair in every respect, and utterly unworthy any serious attention in so far as the principal ground on which he bases the same, is concerned; but nevertheless, such as it is, I will briefly notice it, although every possible question touching the merits of this whole case has been fully discussed above. All questions as to this cause of the motion have been anticipated, and it would be wholly useless to travel over the ground again. I do not like to thrash over straw.

In support of his motion he refers to and relies upon the case of Bradley vs. Fisher, 13 Wall. 335-348. This case, however, is clearly and absolutely against him, and settles the whole case directly in favor of plaintiff in error.

It is here stated, once for all, that plaintiff concedes the doctrine that where a judge of a Court acts within his jurisdiction, or *even* in *excess* of his jurisdiction, that his action, no matter how malicious or corrupt, is wholly and absolutely *privileged*, and that he is not subject to any pains, penalties, forfeitures, harassments, punishment or *civil* liabilities, and this is carrying the doctrine of judicial privilege to its fullest extent, as held by a majority of this high Court in the case of Bradley v. Fisher, or in any other case in either England or America.

It must be observed, however, that both Justices Davis and Clifford dissented to this doctrine in the Bradley-Fisher case, and held that when there was an *excess* of jurisdiction and also malice or corruption an action would lie; but plaintiff in error admits the correctness of this entire doctrine to the full extent to which Justice Field in his opinion in that case carries it. Therefore, that doctrine is not involved in the case at bar for the

following reasons: 1. In Bradley–Fisher the Court had *jurisdiction* of the subject-matter, and there was a grave *subject-matter* to have jurisdiction of. In the case at bar there was no *subject-matter* and there can be no *jurisdiction* without a *subject-matter*. Whenever it appears on the face of the pleadings and record that no crime or any offense known to the law, and that no contempt of any Court has been committed, or anything at all as a *subject-matter* for a Court to act upon, how can there be any *jurisdiction?* In the case at bar the bill in equity was made a part of the petition for disbarment, and it fully appeared that the bill had been filed in the U. S. Circuit Court, and that there was no *scandalous* matter in it. 2. Even if the bill had contained *scandalous* matter, it would only have been an *ordinary* contempt of the U. S. Circuit Court and a matter of which the Supreme Court of Colorado could not possibly have jurisdiction. 3. It also appeared on the face of the record that plaintiff was a member of the bar of the U. S. Circuit Court and acting as a sworn officer of that Court in filing said bill in equity, and that he was acting in the line of his duties under the laws of Congress, and all this is admitted by the demurrer in the case at bar. 4. It is also alleged in the complaint, and admitted by the demurrer, that the said judges of the Supreme Court of Colorado knowingly and intentionally acted in direct violation of both the remedial and criminal Acts of Congress, and it is a *legal* impossibility for State Judges of any Court to have a shadow of jurisdiction to act in that manner. 5. It is also a *legal* impossibility for any State Courts to possess jurisdiction to interfere in any manner with the attorneys, judges, marshals, or other officers of the United States Courts when acting within the line of their respective duties. The recent Nagle–Terry case; decided by this high tribunal, settles this question; but the very fact that the U. S. Courts are

above all State Courts and are a foreign jurisdiction as to all State Courts, and exist in pursuance of the Constitution of the U. S. and Acts of Congress, which constitute the paramount and absolutely Supreme law of the land, settles this question.

6. It is also admitted by the demurrer in the case at bar that these judges colluded and conspired together, and with the other defendants, to hinder, delay and obstruct the administration of justice in the said U. S. Circuit Court, and to wrongfully, maliciously and fraudulently inflict the terrible penalty of disbarment upon plaintiff in error, for doing his duty honestly and faithfully as an attorney of the said United States Court, and that they knowingly and intentionally and maliciously did so in violation of the above Acts of Congress, both remedial and criminal; and admit that they willfully *usurped* the power and jurisdiction to do so.

In the Bradley-Fisher case at pp. 335-348, Justice Field says: "A distinction must here be observed between *excess* of jurisdiction, and the *clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter, any authority exercised is an usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible.*"

In the case at bar it is admitted that the judges willfully, maliciously and corruptly *usurped* jurisdiction, so that the question of knowledge does not arise; but I presume that if in the exercise of their assumed power they violated any of the Acts of Congress, either remedial, criminal or otherwise, it would make no difference whether they had knowledge of their want of jurisdiction or not as all persons are presumed to know the law, and certainly this maxim ought to apply to the judges of a Supreme Court, if to anybody!

Plaintiff in error maintains that under the above opinion of Justice Field, he has a clear cause of action against the judges, even if none of the above Acts of Congress are constitutional; because the fact that plaintiff in error was an officer of the United States Court and acting strictly within the line of his duty, under the laws of Congress, gives the said U. S. Circuit Court original jurisdiction of the case, and also makes it legally impossible for the Supreme Court of Colorado to have had a shadow of jurisdiction of the subject matter of a mere alleged contempt committed in the U. S. Circuit Court, so that plaintiff in error will gladly stand by the doctrine of Bradly vs. Fisher, and that case alone settles the case at bar in favor of plaintiff in error.

If the learned attorney for the defendant in error can, in any manner, comprehend these important distinctions, or even if a mere glimmering of the law in this regard can penetrate his *opaque* brain, we will be done with all such *legal nonsense* as appears in his motion, and what he calls a brief, in support of the same!

I must here warn the Court against said motion. It simply sets out the Acts of Congress on which the action is founded, but wholly omits to set out any of the allegations of the amended complaint which bring defendants in error clearly within the provisions of said Acts, and wholly omits to mention the admission of all such facts by their demurrers. In fact, the motion in this regard is nothing but a mere *sham* and looks very much like a shallow attempt to deceive and mislead the Court! I have set out the amended complaint, the two separate demurrers and the assignment of errors in full in my general brief; but I will refer the Court to pp 1 to 9 of the printed record for a full copy of the amended complaint; but which is fully and correctly set out above in

my brief. I ask a careful reading of this complaint by each member of this honorable Court.

The case of Randall vs Brigham, 7 Wall., 523–541, is also cited in support of this motion, and I shall only say that I endorse the doctrine of that case to the fullest extent, but it does not in the remotest manner support the motion to dismiss in the case at bar, but on the contrary, in so far as it goes, most strongly supports the contention of plaintiff in error, and he is very willing to stand by the doctrine of this case as well as by the doctrine of Bradley vs. Fisher.

This learned attorney also says the action for disbarment must have ended. Who ever heard before that any pretended suit before a pretended court which had no jurisdiction at all and could not be a Court at all, could have either a legal beginning or an end! This action may be somewhat in the nature of an action for a malicious prosecution, but it is certainly not a technical action for a malicious prosecution. It is true this judgment of disbarment had all of the injurious effects of a real disbarment, although in law it was utterly void and of no effect; but it operated under color of a regular judgment, as injuriously as a real judgment!

31.

With a stupidity which is marvelous indeed, we have a repetition of the same disgusting and sickening flunkyism, that because some of these defendants in error were judges of State Courts at that time, that therefore they were above all State law, and possessed power far beyond the power possessed by the State itself, just as if an officer created by the State could possess greater power than the State which created such officer, no matter whether judicial, executive or otherwise; and also claim-

ing that said judges of Colorado Courts were not only above all the power possessed by the State, but absolutely above both the Constitution and laws of the United States, which are the paramount and supreme laws of the land; but it seems now that these wonderful Colorado State judges are above the Constitution and laws of Congress, and that judges of State Courts are the supreme power in this country; that they are judicial Cæsars! It is well worth while to prosecute this suit just to find out what sort of phenomenal beings, under our form of government, State judges are. In the history of this transaction I have found one placed on the witness stand and allowed to testify directly against my client, and when I attempted to subject him to an ordinary and proper cross-examination, I was gravely informed by the presiding judge that I could not be permitted to cross-examine a State Judge. I was astounded, for I supposed there was not a human being on earth who could, in American and English Courts of justice, be wholly exempt from a proper cross-examination upon the witness stand simply on account of any official position, however high, he might hold. When this demurrer came up in the Court below, the Court attempted to *intimate* that Colorado State judges were above all law, both State and Federal, and on that ground sustained the demurrer. Now, comes this motion to dismiss this suit long before it is reached, simply because these Colorado judges are above all constitutions and laws. This is the only ground on which the learned attorney, whoever he may be, seems to rely. He asks this great Court to turn aside from its crowded docket of hundreds of important cases, involving no doubt, in the aggregate, millions of dollars, and, perhaps, the liberty and lives of many persons, and from suits involving large and extensive enterprises and important business operations, in order to hear the *merits* of this case, but of its

order, simply because some of defendants in error were, at one time, judges of Colorado Courts, and one of defendants in error still a judge of a Colorado Court. When a judge of a Colorado Court is sued as an individual, is he any better than another citizen? Throughout this whole matter the most contemptible and preposterous claims have been made for these State judges. But all of them but one have long since ceased to be judges. Judge Elbert, who really wrote the opinion in the disbarment suit, resigned his office and left the bench immediately almost after the commencement of this suit—over two years ago.

He had never been able to make his *salt* at his profession; but he had married a wealthy lady, who soon died, and left him some money; and when he found that his acts of judicial tyranny and corruption were about to get him into financial responsibility, he at once resigned; and if this suit never accomplishes any other good, it has conferred an everlasting blessing upon the people of Colorado in *knocking* him off the judicial bench, which he had so shamefully disgraced for so many years.

In a case in 4 Colorado, p. 344, of Pullman P. Co. v. Barker, this eminent Colorado jurist actually decided that a woman, who was traveling in the cars when she was having her monthly *menses*, was guilty of *contributory negligence*, and could not recover damages when a worthless car was wrecked and she was badly injured, for no other reason than that she was *unwell*. This decision has been a judicial *burlesque* all over the country, and it ought to be referred to a Woman's Rights Convention. But it illustrates the man. At that time both himself and his wealthy father-in-law were interested in same Colorado railroads, and this decision shows to what extremes he would go on the judicial bench to favor railroads and promote his own interests. In fact, this small judicial tyrant and corruptionist stopped at nothing in

the exercise of his judicial power. If anything ever occurred on a judicial bench in the civilized world to equal this poor woman's case, I should like to hear of it. And the other two Supreme judges both fully concurred. This decision is simply a matter of *derision* everywhere; but it was a serious matter to the unfortunate woman. But these Colorado jurists have been "acting up these fantastic tricks" on the Supreme bench of the State for many years with impunity. This man Elbert is a hypocrite in religion, a corruptionist in politics, *socially* and *secretly* a moral *leper*, and when on the judicial bench he was an abject tool for corporations, a flunky to wealth, a despiser of the rights of the poor, and a stolid, lazy, corrupt, ignorant tyrant, and the people of Colorado naturally rejoice that he is off the bench, and that there is no danger of his ever getting back again.

Judge Beck, another of these defendants in error, is also off the bench. His long nine-year term expired two years ago to the everlasting gratification of the people, and he tried to obtain a re-nomination, but was not able to secure a single vote in a State convention.

His ignorance of all law was so profound, and his stubbornness and disposition to act the vindictive, morose and stupid tyrant, so great, and his sympathies for all kinds of official corruptionists and scoundrels so overpowering, that he at once sunk into a contempt as profound as his own ignorance of all law. Judge Rogers, another of the *judicial* defendants in error, for whom this remarkable demand is made in said motion, has also ceased to be a judge. His small City Court became so *foul* that everybody deserted it, and two years ago the legislature abolished the Court to get rid of the judge, and this eminent Colorado jurist has since been trying hard to make his *salt* at the practice of the law, but as yet has not succeeded. In fact, if all three of these judges

were to form a law partnership they would soon starve to death if they had to depend on their law business. If Mr. King had only known it, he might also have attached this wonderful *judicial charm* to Lucius P. Marsh, another of the defendants in error, for he, too, has a right to claim the benefit of this wonderful *judicial odor*—Marsh has the real, genuine judicial odor and *charm* as well as the others.

Some years ago he was elevated to a high judicial position in Ohio, which he disgraced for several years, when he was impeached and hurled from the sacred bench which he had *polluted*, when he fled to Denver, where he went into the practice of law; but like all these other ex-judges, wholly failed to make his *salt!* About this time, however, Rogers' Court was in full blast, but he had not been found out; but Marsh being an expert, and having had a large experience in such matters, soon found Rogers out, and saw his opportunity, and at once set up as a *corruption broker* in order to help Rogers along, and they both flourished in business until they were found out, and this suit of Mrs. Newton's had exposed them. It will be seen that Mrs. Newton's suit and this action have already done a world of good, and taught these *villians* in high places a lesson they will never forget; but unless this high Court shall sustain this motion to dismiss, and prevent me from prosecuting this suit to a final determination on its merits, it will do more to purify the judicial atmosphere of Colorado than everything else of this nature that has occured in the State for many years, or is likely to occur again very soon in the future!

It was while Rogers & Marsh were doing a flourishing busines, however, that J. Jay Joslin, another of the defendants in error, and who is a wealthy scoundrel and common swindler, engaged Judge Marsh—I must call him Judge as he, too, has the judicial *odor* and *charm*—

to fix Rogers, and obtain a judgment in Joslin's favor and against Mrs. Newton!

After Marsh begun to gain notoriety as a *corruption broker*, he soon became a great favorite of these supreme judges, as all men of that character and engaged in that business were sure to be!

Now, I have made this brief statement to answer the charm doctrine advanced by the learned attorney for defendants in error as a ground for his motion, as *such stuff* cannot be answered by reason or by a reference to law.

I now wish to assure him that so far as Elbert, Beck, Rogers and Marsh are concerned, they have all long since ceased to be judges, and hence that wonderful judicial *sanctity* has wholly left them, and that no *odor* now attends them in the city where they live, except a *moral stench* and a supreme contempt on the part of the people.

Therefore, I maintain that this august tribunal should at once sweep away all of this disgusting *stuff*, as we have had enough of it, and hear this case on the *law* and the *facts* just as any other case is heard! Let this case stand or fall on its own stubborn and admitted facts, and the grave and important legal questions I have raised! Let us be done with legal nonsense, and the *silly* doctrine of *judicial charm*! But unfortunately for defendants in error this is all the defense they have or ever have had to this action! They cling to it like a drowning man to a straw.

32.

I must state here that it is the practice of the U. S. Circuit and District Courts for the district of Colorado to only admit such resident attorneys to their bars as are first admitted by the Supreme Court of the State; so that all of the members of the bars of these U. S. Courts,

who reside anywhere within the State of Colorado, are also members of the bar of the Supreme Court of Colorado, and whenever the Supreme Court of Colorado disbars an attorney, he is disbarred from all the Courts of record within the whole State—that is, all of the State Courts of record. It will thus be seem what an immense and dangerous aribitrary power the judges of the Supreme Court of Colorado have in this regard; and the case at bar will fully illustrate the unscrupulous and despotic manner in which this vast power is abused and perverted by these judges, and that, too, in gross violation of every guard and restraint, which the statutes of the State have thrown around it, as their monstrous contention is that they are not bound by any law or statute of either the State or United States in this regard! They claim to be supreme over all law! In the case, *ex parte* Bradley, 7 Wall., 447–453, above referred to, the Court uses the following language touching the right and discretion of a Court in disbarring an attorney, to wit:

"But this discretion is not unlimited, the Court of King's Bench will commend its due exercise, Tapp. Mand., 14. It must be a sound discretion and according to law (p. 13). As said by Chief Justice Taney, in *ex parte* Secombe, 19 How., 13, the power (to disbar) is not, however an arbitrary and despotic one, to be exercised at the pleasure of the Court, or from passion, preiudice or personal hostility." And Chief Justice Marshall, in *ex parte* Burr., 9 Wheat., 530, says: "The Court is not inclined to interpose, unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper."

Justice Nelson goes on to say in *ex parte* Bradley: "That the ground of their decision in that case was, *that the Court below had no jurisdiction to disbar the attorney for a contempt committed before another Court. That no amount*

of judicial discretion of a Court can supply a defect, or want of jurisdiction in a case. The subject matter is not before it; the proceeding is coram non justice and void."

These were both Courts of the District of Columbia, and if one co-ordinate Court had no jurisdiction to disbar an attorney for an aggravated contempt in another, much less has a State Court jurisdiction to disbar an attorney for a mere pretended contempt alleged to have been committed in a U. S. Court.

This case of *ex parte* Bradley is right in point in the case at bar, except that the case at bar is infinitely stronger in favor of plaintiff in error. In fact the case at bar is certainly phenomenal in its strength in favor of plaintiff in error. It is also phenomenal in its entire history and in its *enormity* as a judicial outrage! It was an act of cool, deliberate and premeditated *usurpation* and judicial tyranny without a shadow of excuse of any kind to redeem it from its monstrous character! The most absurd thing amongst all absurdities of this motion and the so-called brief in support of the same, is the worse than *silly* contention by the *learned* attorney for defendants in error, that even Rogers, Marsh and Joslin, who were the relators and prosecutors in the disbarment matter, are also exempt from personal responsibility because they acted under the mere shadow of the supreme judges! It would be an aggravated *contempt* of this august tribunal to attempt to argue such a proposition.

This *learned* attorney may also, in his oral argument or in his reply to this brief and argument, make a personal attack on plaintiff in error, based on falsehoods received from his clients, touching this matter; but in anticipation of anything of that kind I refer to the full, complete, unasked and voluntary vindication of my professional conduct in the prosecution of Mrs. Newton's suit

in equity by Justices Brewer and Hallett who heard the case. I have also, at all times, when before these supreme judges of Colorado, treated them with uniform professional courtesy and respect, and that, too, under the greatest provocation, perhaps, that any other attorney has ever been subjected to in this whole country! The attack I now make on these judges is more than justified by the allegations of the complaint, and solemnly admitted by their own demurrer, and all of which I know to be absolutely true, as a matter of fact behind their demurrer! The whole course of plaintiff in error was to *appease* and conciliate these relentless tyrants! Of course I knew they were *bad* men, but I also knew that they were bad men in high positions and clothed with *vast* and *extremely* dangerous powers, which they had been exercising for years in the most cruel, oppressive and dangerous manner, and that they were still becoming more and more *cruel* and *vindictive* all the time in the unlimited and unrestrained exercise of this arbitrary power, as fully illustrated by the case at bar! Whilst most of the able lawyers at the bar had and could not help having the most profound *secret* contempt for them, yet they very naturally had a fear and dread of the dangerous manner and alarming extent to which these petty tyrants had become *drunken* on their unlimited and arbitrary power. By reference to the Hughes disbarment case above referred to, and all of their opinions in the reports of the State in regard to disbarment cases, it will be seen what monstrous and unlimited claims of arbitrary power they make, and that, too, in direct violation of the plainest provisions of the statutes of their own State. They openly defy all law in this regard

33.

The technical cause relied on for the dismissal of the writ of error is, that the record was not filed in the clerk's office in apt time.

The citation was served and filed in the Court below on the 3d day of October, 1887, and the writ of error, bond and every thing necessary to remove the case into the Supreme Court was completed on the said 3d day of October, 1887, just about the commencement of the October term, 1887. See Record, p. 17. A written stipulation was filed giving plaintiff in error the whole of said term in which to lodge the record and writ of error, citation and bond in the office of the clerk of the Supreme Court of the U. S. any time during said term commencing on the 10th day of October, 1887, and extending into the spring or summer of 1888. I do not know just when that term ended, but it must have been early in the summer of 1888. Page 16 of the Record shows that the clerk of the U. S. Circuit Court for the District of Colorado did, on the 5th day of May, 1888, certify the whole record and all the papers to the Supreme Court of the U. S. at Washington, D. C., in proper shape. This must have been during the October term, 1887, as that term certainly had not adjourned at that time; and if it had not, then the writ, citation, bond and transcript of the record were all duly sent to the clerk of the Supreme Court at Washington in apt time according to the terms of said stipulation, and if there was any delay in filing said papers by the clerk it must have been a mistake, as I supposed every thing had been done that was at all necessary for me to do in regard to the matter; and if I omitted any thing at all that was necessary to have said paper filed and the case docketed, it was simply an innocent mistake and not a matter of carelessness or negligence at all; for I sup-

posed I was watching the matter with the very greatest diligence; but as I was not at all familiar with such matters in the U. S. Supreme Court,it may be possible that I did make some mistake, or was guilty of some oversight on my part. As I only received notice of this motion two or three days ago, I have had no time to communicate with the clerk of the Court at Washington to find out what really did cause the delay in filing the papers. I am over 2,000 miles away, and it will be impossible for me to find out touching this matter by the 15th day of December, 1890, the day on which this motion is to be called up. I shall, however, send to the clerk an affidavit, containing all I know in regard to the matter, and if it is not satisfactory I must ask time to look into the matter before the motion is heard.

Now as to the law in regard to the matter. The attorney for the defendants in error cites several decisions of this Court, and maintains that no matter how perfectly and correctly every step has been taken to wholly remove the case from the Court below into this Court, that this Court acquires no jurisdiction if any delay whatever occurs in regard to docketing the case. This contention, however, is not at all correct, although some of the authorities cited might at first sight seem to sustain that view.

The sum and substance of all of the decisions on this point is, that it is purely a question of fact as to whether or not plaintiff in error has been guilty of such a degree of negligence as will induce this Court, in the exercise of its discretion, to dismiss his suit as a punishment or consequence of such negligence. It must be observed that there is not a single case in which this Court has dismissed a case where the delay or apparent neglect has been explained, and I believe that in nearly all of the dismissals for this cause the cases have never been fully

and correctly brought into this Court al all—a bond wanting, a citation never served or some other defect, and if any have been dismissed purely on account of delay, I think it will be found that there has been great delay and great apparent neglect on the part of plaintiff in error. On account of the very short time given me to prepare my brief and argument on the merits of the case, and to look into this matter, as well, I have not been able to give this matter a careful investigation, but I think the above statements will prove correct.

It has been said by this Court that under Section 1012, 2 Stat. 244, Act of 1789, that it had been held that if the transcript was not filed and the case docketed *during* the term to which it was made returnable, *or some sufficient excuse given* for the delay, the writ of error *might be dismissed.*

Hamilton v. Moore, 3 Dall. 371.
Grigsby v. Purcell, 99 U. S. 505.
Blair v. Miller, 4 Dall. 21.
U. S. v. Booth, 21 How. 512.

In Grigsby v. Purcell, 99 U. S. 507, Chief Justice Waite, who delivered the opinion, says: "The *real* objection is not that this Court has no *jurisdiction*, but that the plaintiff in error or appellant, as the case may be, has failed to duly present his case."

A careful examination of all the authorities on this matter will show that it is wholly a matter of *discretion* on the part of this Court when there has been willful negligence in not prosecuting the case, and no cause has been dismissed for *slight* negligence, or where an explation and a reasonable excuse has been made. Then, if it is a matter of *discretion*, it would be wholly inconsistent with all the rulings of this high Court touching the exercise of *all discretions*, to require anything more than a

reasonable excuse for the delay, or unintentional mistake or oversight in such matters, or any inexperience of an attorney in regard to how matters are conducted in the clerk's office. I have never understood until recently, and I only now infer, that it is a general rule with the clerk not to file papers until a *formal appearance* is entered by an attorney. In the case at bar I did not at that time imagine there was such a rule, nor did I understand that no writs of error, although properly executed and returned, would not be at once filed by the clerk unless a docket fee was paid in advance; but I now infer such is the rule; and it may be that something of this kind was the reason why the case at bar was not docketed.

I remember that I requested the clerk to docket the case when it was first sent up; but did not think such a request necessary, never having practiced in a Court where it was not a matter of course for the clerk to file *writs* anyhow when returned; and this whole matter is simply the returning of a writ properly issued and properly served. I never supposed an attorney, or a party to a suit, was bound to superintend the *duties* of the clerk. But if there was any innocent oversight or mistake on the part of plaintiff in error in the case at bar, it would be a very severe penalty to inflict if this Court should dismiss his writ of error in such an important case as this, *in the exercise of a sound judicial discretion.* There would be no proportion between the offense and the penalty. And especially as plaintiff in error has been *compelled, by the nature of this motion,* to go to considerable labor and much expense in preparing a full brief and argument on the whole merits of the case, as the principal ground for a dismissal relied on by the attorney for defendants in error directly involves the entire *merits* of the whole case. The defendants in error

have also neglected this matter until long after the case has been filed and docketed and the appearance of myself formally entered as attorney for myself, and certainly I must have paid the docket fee long ago, but I do not remember now just when. I had also sent on to the clerk of the Court, to have filed, an assignment of errors a few days before I received notice of this motion; and I was watching this case with all the diligence possible at my distance from the Court. I cannot yet see that there has really been the slightest negligence on the part of plaintiff in error in this matter; and my affidavit will show that there has been no intentional oversight or mistake or neglect in regard to the matter, all of which in connection with the short delay, as compared with cases referred to in support of said motion, ought to be a full and satisfactory *excuse* and explanation, and especiallly so, considering the long neglect of defendants in error to move in this matter even after the case had been docketed, and the further fact that no possible damage has accrued to defendants in error by the delay. No judgment for money or property in the Court below has been *tied up* by this proceeding, or writ of error. The writ of error in this case did not operate as a supersedeas, as there was no judgment, except for costs.

This judgment was rendered in the Court below on the 27th day of July, 1887, and the two years' time allowed by Section 1008 for prosecuting a writ of error or appeal has expired, and in case this suit should be dismissed on this motion, no other writ could be brought even with leave of Court; and, therefore, plaintiff in error would have no other remedy whatever; and to wholly deprive him of any remedy at all in such a case as the one at bar as a *mere matter of discretion* for an innocent mistake, if, indeed, there has ever been any such mistake on his part, would be a very severe penalty indeed. It would be a

very *severe* exercise of a sound and reasonable judicial discretion; but it seems to me that this high Court, from the whole history of the sound and reasonable manner in which it has always exercised all discretionary powers, will not, for a moment, attempt such unreasonable severity as defendants in error are asking by this motion.

Rule 9 of this Court, in regard to docketing cases, simply requires plaintiff in error to *file with* the clerk the record, etc. Does this rule require anything more of plaintiff in error than to send up or cause to be sent up the record, and the writ of error, which purports, at least, to be issued out of this Court, and request that the same be filed—is it really necessary to file a writ of error which really issues out of this Court in order to give this Court jurisdiction? Is it not the duty of the clerk to file and docket the case when everything is sent up in proper shape with the request to docket, and even if no direct request to file and docket be made?

"Of contemporaneous motions to docket and dismiss the *former* will be allowed."

Owing vs. Tieman, 10 Peters, 24.

The motion to dismiss in the present case comes long after the record was filed and case docketed.

"*The rule will not apply where the record is filed before the motion to dismiss.*"

Bingham vs. Morris, 7 Cranch, 99.
Picket's Heirs vs. Legerwood, 7 Peters, 144.
Also Sparrow vs. Strong, 3 Wall, 97.
Fitzsimmons v. Ins. Co., 4 Cranch. 180.
6 How. 81.

"A cause will be reinstated after dismissal when no injustice will be done the opposite party."

Given vs. Breedlow, 15 Peters, 284.

Examine Desty's Federal Procedure, pp. 573-574, and authorities cited. Also examine Conkling's treatise, pp. 684, 685, 686, 687, 688, as to the causes for which a motion of this kind can be made and when it will be sustained by this Court. Of course this motion as to the *merits* of the case cannot be sustained—in fact, not even heard.

34.

CONCLUSION.

I still maintain that all of the members of the Colorado bar have a deep interest in this suit. The whole history of this case shows that there has been a systematic plan on the part of the corrupt Supreme Court of the State of Colorado, not only to grasp and use in the most arbitrary and tyrannical manner the vast and dangerous power invested in them, touching *contempts* and *disbarments*, to intimidate and crush out the independence of the members of the bar in regard to their professional conduct in all of the Courts of the State, but they have also attempted to usurp the power to crush out the independence of the members of the bar in both the Circuit and District Courts of the United States for the District of Colorado, and have actually exercised this *usurped* power in the most oppressive and tyrannical manner in the disbarment of plaintiff in error and his associate, H. B. Johnson, as shown by the history of this case and the admissions made by their demurrer. It is true that after keeping Mr. Johnson disbarred for about three months, and breaking up his business as attorney and inflicting upon him all of the shame and disgrace in their power, they made an order restoring him to the bar after an additional suspension; and did so after copies of the complaint in this action had been served on each of them, and

they could not help understanding fully the terrible outrage they had already committed against Mr. Johnson, who is an able lawyer, and noted for the great respect with which he always treats the Courts, and for his dignified and fine professional bearing at all times! These judges at the same time they inflicted this additional punishment upon Mr. Johnson with their eyes wide open as to the enormity of the outrage they had inflicted on both plaintiff in error and said Johnson, took upon themselves to write and circulate through all of the law journals another false and malicious opinion against plaintiff in error, in which they resorted to the most malignant and barefaced falsehoods, and fairly gnashed their teeth, although plaintiff in error was not before them at all, nor at all in their Court, and had not been notified or informed in any manner that these judges were *secretely* trying him over again, and preparing a more false and malignant opinion than ever against him, for the purpose of maliciously circulating the same far and wide throughout the law publications of the entire country! Thus it was that these vindictive judicial tyrants again usurped the power, and without notice of any kind or his even suspecting such an additional outrage, and without being present or being heard, was the second time *secretly* tried by them, and their false and malicious opinion circulated broad-cast over the land. It was this last false and malicious opinion these judges, as I was afterwards informed, managed to *secretly* place in the hands of Justice Brewer just before Mrs. Newton's case was heard by him, for the purpose of deceiving and misleading him, and perhaps it was this which induced him to *protect* Judge Rogers from a cross-examination after he had been allowed to swear away Mrs. Newton's rights in behalf of Joslin! All of these judges had conspired with Rogers, Marsh and Joslin, as alleged in the

complaint and admitted by the demurrers, to crush out Mrs. Newton's suit, and it was to accomplish this infernal purpose that plaintiff in error and Mr. Johnson had been disbarred, as admitted by the demurrer. It was also clearly proven on the disbarment trial that Marsh had confessed to a man named Topping, that he had bribed Rogers to render judgment for Joslin and against Mrs. Newton, and Topping had so informed plaintiff in error before he filed Mrs. Newton's bill, which of itself was enough to justify the most prudent lawyer in commencing such a suit.

Marsh, however, bribed Topping to commit perjury and deny the confession; but it was shown by two witnesses, even to the satisfaction of these judges, that Topping had, in connection with a most important suit of his own, in which Marsh wanted to *buy* Rogers for him, confessed that he had bought Rogers in Mrs. Newton's case, and referred Topping to that case to show what he could do with Rogers by bribery—that he was very cheap, and would do just what he wanted him to do.

Fools may shut their eyes and deny that there is any corruption at present. But the sad fact remains that it has been for some time past largely *reigning* and *ruling* in our legislative and congressional halls, and to some extent in all departments of our State governments, and that the governments of our great cities are almost entirely dominated by rank, defiant, shameless and barefaced corruption; and moreover, in some of our large cities, and in some of our mining States and Territories, almost open and defiant *corruption* reigns and rules in many of our courts of justice, until people are becoming very much alarmed! No greater calamity can befall any people than to be forced to lose all confidence in the impartial and pure administration of justice; but unfortunately such has been the case in Colorado for several years

past, and it seems to be growing worse all the time until the people are actually becoming desperate! Against a common thief or a highway robber a man has some chance to protect himself, but against the *corrupt judicial* robber he has no protection and no remedy! These bold, barefaced judicial robberies that sweep large and often hard-earned fortunes from honest men without the slightest hope or chance of redress, make people terribly desperate, and for some time in Colorado many *mutterings* are heard of violence and bloodshed! In fact, a short time ago one judge, who was suspicioned of delivering a *corrupt* opinion in a mining case in a mountain county, was deliberately and openly shot dead upon the bench just as he concluded what was claimed to be a corrupt decision; and the remarkable fact connected with this tragedy was that public opinion in the county was so strongly in favor of the murderers, that, although they were well known and made no attempt to conceal themselves or escape, yet were not even arrested or tried! Plaintiff in error will never forget the impression made upon him, when, a short time after this remarkable tragedy, he tried a case in the same room where the floor was all stained with the blood of this unfortunate judge. The ball was a large one and passed clear through him, from between his shoulders through his chest; and, as he was sitting on a small platform with nothing in front of him, when shot he pitched forward near the middle of the room, and all the blood in his body poured out on the floor, until nearly the entire floor was covered with it. If he were really engaged in delivering a corrupt opinion or decision what a swift and terrible retribution overtook him.

It is to be hoped that something may be done to prevent the occurrence of other like tragedies in Colorado! The great difficulty about such violence is that when the

people shall be maddened and forced to it, the innocent will fall with the guilty! Fools and judicial tyrants may shut their eyes to these stubborn facts and go on with their judicial robberies; but there will be an awful retribution some day! I mention these facts to impress upon this high tribunal the importance of delivering an opinion in the case at bar that will ring out, not only through Colorado, but throughout our corrupt cities and all States and Territories, where, like in Colorado, defiant and supposed safe judicial corruption reigns. In the case at bar there is no question as to *guilt*, for it is all *solemnly* confessed by these corrupt, shameless and openly defiant judges! For many years past they have not only been corrupt themselves, but they have used the whole judicial power of their high Court to shelter and protect and encourage corruption in all of the lower Courts throughout the whole State, and have actually done more to bring shame and disgrace and contempt upon the administration of justice than all the other Courts in the State; because they have had more power to do so, and they have not only grasped all the arbitrary power conferred upon them as to *contempts* and *disbarments* as above stated, but have also, intentionally and maliciously, *usurped* power as shown by the case at bar, and have cruelly and wantonly used all of their real power and all of their *usurped* power for the infernal purpose of *striking down* and *crushing* out every honest, manly and fearless attorney and editor who has attempted, in a legal and honorable way, to expose these corruptions. They well knew they had nothing to fear from impeachment or any power within the State, and until this suit was commenced against them, they supposed they possessed supreme and unlimited power in this regard, and could trample the laws of their own State under their feet with impunity, and crush every attorney or editor who should

attempt, even in the discharge of duty, to do anything that might in the slightest manner reflect upon themselves or any other judges in the State, just as they used all of their own judicial power, and also *usurped* power in the disbarment case, to protect both Rogers and Marsh and also assist Joslin in robbing Mrs. Newton and her children.

This high Court may never have such another opportunity of delivering an opinion that will ring out through the whole country, and make every corrupt judge tremble on his bench; and also remain, in its moral power, for all time to come, as a solemn warning to corrupt judges throughout the land and, perhaps, throughout other lands. There never has been a time in the history of this country, when such an opinion from this august tribunal was so badly needed as at present.

Are able and fearless attorneys, who are willing to stand by the *law* and their injured clients, in defiance of all the *infernal* powers of judicial corruption, and the loss of their professions, to be encouraged and strengthened by the support of this august Court? Or will this Court also turn them away, and thereby virtually lend encouragement and support to *confessed* corruptionists, criminal conspirators, judicial falsifiers and usurpers, wilful and corrupt perjurers, intentional violators of the criminal statutes of Congress—in short, self-confessed felons and shameless *polluters* of a Supreme judicial bench?

This august Court is the last tribunal to which plaintiff in error can appeal for justice for himself, and in behalf of all honest, independent and fearless members of the Colorado bar, and in behalf of all fearless and honest editors of papers in Colorado, and in behalf of the impartial and pure administration of justice in Colorado, and in behalf of the most sacred rights of the honest people in Colorado, who will not resort to the corruption of Courts

and the prostitution of all justice in their new and flourishing State; and plaintiff in error makes this last appeal with an abiding confidence that it will not be in vain.

The following brief historic item is very appropriate to this argument, to wit:

What Ruined Greece and Rome.

Bribery grew until it had ruined both Greece and Rome. The oracle of the early Pythian Apollo said: "Nothing but avarice can conquer Sparta," and it was indeed bribery that did it. Caius, the Samnite, said: "When the Romans begin to take bribes there will soon be an end to their flourishing empire." In accordance with this prediction, Cicero ascribed the ruin of the Roman Republic to the moral and social degeneracy of her people, particularly specifying avarice conducing to bribery, as the vice most dangerous and destructive. Historic facts confirm the philosophy of these forebodings. The Roman senators and consuls were often suspected of being purchased. The emperors who followed were full of corruption. Cæsar gave a pearl worth two hundred thousand dollars to Servilia to buy the favor of her son, Brutus, and paid three hundred thousand dollars to bribe the Consul Paulus. Crassus gave many bribes and large ones. Antony squandered millions in like manner. Caligula wasted in a year one hundred and twenty million dollars that Tiberius had left him, and Seneca says, "he was born to show the world what mischief may be done by the concurrence of great wealth and great wickedness," that "he spent fifty thousand dollars on a single dinner, and divided his life betwixt an anxious conscience and a nauseous stomach." Jugurtha bribed the commissioner sent by the Senate to save the life of his nephew,

Adhermal, but he murdered him, nevertheless, and then bribed even the Senate, and when the Tribune Memmius exposed his bribery and he was banished, he went his way, saying: "O venal city! Thou shalt soon perish if I can find a purchaser!"

The vast accumulations and concentrations of wealth in our country, and the mammoth corporations and mines worth untold millions, all tend to bribery and corruption in every department of both State and Federal government; but legislative and congressional bodies may all become venal and corrupt, and enact bad and oppressive laws, or refuse to enact wise and necessary laws; United States senatorships may be bought and sold at fabulous prices, and all other official life and official departments of State and Federal governments become corrupt; but so long as the great judiciary departments of our State and Federal governments remain sound and pure, the people may be able to defy all other forms of corruption; but whenever the great judicial power of this nation shall be perverted by *corruption* to a monster engine of wrong and oppression, nothing will remain for the American people but a dark, bloody chaos.

T. A. GREEN,
In Propria Persona.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1099.

THOMAS A. GREEN,

PLAINTIFF IN ERROR,

vs.

SAMUEL H. ELBERT et al.

Motion to Dismiss, with which is united a Motion to Affirm.

GEORGE A. KING,
Attorney for Defendants in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1890.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THOMAS A. GREEN,
PLAINTIFF IN ERROR,

v.

SAMUEL H. ELBERT, WILLIAM E. BECK JOSEPH C. HELM, MERRICK A. ROGERS, LUCIUS P. MARSH, AND J. JAY JOSLIN.

No. 1099.

MOTION TO DISMISS, WITH WHICH IS UNITED A MOTION TO AFFIRM.

Now come the defendants in error, Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, and move the Court to dismiss the writ of error in this cause for want of jurisdiction, and for want of prosecution on the part of the plaintiff in error, and assign the following ground in support of said motion :

That the writ of error in this cause was signed, sealed, allowed, and filed in the office of the Clerk of the Circuit Court of the United States for the District of Colorado,

on the 3d day of October, in the year 1887, and was by its terms, as well as by the statute and the rules of court in that case made and provided, returnable to the October term, 1887, of this Court, and yet the plaintiff in error, in violation of Rule 8, section 5, of the Rules of this Court, failed to file the transcript of record, or to docket the cause until long after the expiration of said October term, 1887, to wit, the 13th day of January, 1890, as appears by the indorsement on said transcript of record.

And the defendants in error, in pursuance of Rule 6, section 5, of the Rules of this Court, also move the Court in case of denial of the motion to dismiss, then that the judgment of the Circuit Court of the United States for the District of Colorado be affirmed, on the ground that although the record may show that this Court has jurisdiction, it is manifest the writ of error was taken for delay only, and is frivolous, and that the question involved in the cause is too plain to need further argument.

BRIEF.

1. *On the Motion to Dismiss.*

This is an action at law instituted in the Circuit Court of the United States for the District of Colorado, on the 20th of January, 1887, by Thomas A. Green, the plaintiff in error, against Samuel H. Elbert, William E. Beck, Joseph C. Helm, Merrick A. Rogers, Lucius P. Marsh, and J. Jay Joslin, the defendants in error, to recover the sum of $50,000 damages. It nowhere appears in the record that the parties are citizens of different States, but the action purports to be instituted under the civil rights legislation of Congress, as contained in sections 1979, 1980, and 1981 of the Revised Statutes of the United States, which are as follows:

"SEC. 1979. Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

"SEC. 1980. First. If two or more persons in any State or Territory conspire to prevent by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

"Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

"Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any qualified person as an elector for President or Vice-President, or as a member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having or exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

"SEC. 1981. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have

such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

The first three defendants, Messrs. Elbert, Beck, and Helm were, at the time of the occurrence of the grievances complained of, Judges of the Supreme Court of the State of Colorado. Mr. Rogers was Judge of the Superior Court of the city of Denver, in said State of Colorado. Mr. Marsh was an attorney at law practising in said Superior Court, and Mr. Joslin was a party defendant to a suit pending in the Circuit Court of the United States for the District of Colorado.

The "conspiracy" alleged to have been committed in violation of the above-cited laws of the United States, consisted in the fact that the plaintiff, Green, having, as solicitor of a certain Isabel J. Newton and her husband, filed in the United States Circuit Court a bill in equity against the defendant, Joslin, containing scandalous statements against the defendant, Rogers, alleging that a certain judgment in his court had been obtained through bribery and corruption committed by the defendant, Marsh, as attorney in the case, Rogers and Marsh thereupon petitioned the Supreme Court of Colorado for the disbarment of Green for having made such allegations, on the ground that the charges made by Green against Judge Rogers and Mr. Marsh were made maliciously. The defendant, Joslin, is stated in the complaint (p. 4) not to have joined in said petition for disbarment, but it is alleged that he "conspired, confederated, and colluded with said Rogers and Marsh," etc. The offence of the other three defendants,

Messrs. Elbert, Beck, and Helm, consisted in the fact that they, as Judges of the Supreme Court of Colorado, and in their capacity as such court, granted the petition, and entered a judgment of disbarment against the plaintiff, which he alleges "is still standing unreserved and in full force, the same as a good and valid judgment would be in so far as its operation is concerned in said State, and that no appeal, writ of error, or mandamus can under the laws of said State be made available in behalf of plaintiff and his said associate, and that said judgment is final and wholly without any legal or equitable remedy in said State; that said Supreme Court is the Court of last resort in said State, and that all of its judgments and decrees are final and conclusive in said State." (Record, p. 5).

The defendants all demurred to the complaint (pp. 10, 11). After argument the demurrer was sustained by the Court, and on the 27th of July, 1887, judgment was entered for the defendants (p. 13).

On the 3d of October, 1887, a writ of error was issued by the Clerk of the Circuit Court, allowed by the District Judge, and filed in the Clerk's office (pp. 15, 16). On the same day a bond on the writ of error was filed and approved by the District Judge (p. 14), and a citation filed with proof of service (pp. 17, 18). The writ of error was of course returnable to the October term, 1887, by the provisions of Rule 8, section 5, of the Rules of this Court. The transcript of record was required to be filed in the office of the Clerk of this Court, and the cause docketed within the first thirty days of that term. Counsel for the defendants, however, in a spirit of liberality, agreed to a stipulation allowing the plaintiff in error to file the record in this Court and have the cause docketed *at any time* during the October term, 1887, instead of during the first thirty days (p. 13). The cause was not docketed, however, dur-

ing that term, and the transcript of record, as appears by the file marks thereon (p. 19, and printed cover of record), was never filed with the Clerk of this Court till January 13, 1890.

Under decisions of this Court so frequently repeated as hardly to need citation here, this was fatal to the jurisdiction of this Court, and the writ of error on this ground must be dismissed. *The Virginia*, 19 How. 182; *Castro* v. *United States*, 3 Wall. 46; *Grigsby* v. *Purcell*, 99 U. S. 505; *The S. S. Osborne*, 105 U. S. 447; *Hilton* v. *Dickinson*, 108 U. S. 165, 168; *The Tornado*, 109 U. S. 110; *State* v. *Demarest*, 110 U. S. 400; *Killian* v. *Clark*, 111 U. S. 784; *United States* v. *Burchard*, 125 U. S. 176; *Hill* v. *Chicago & Evanston R.R. Co.*, 129 U. S. 170; *Small* v. *Northern Pacific R.R. Co.*, 134 U. S. 514.

2. *On the Motion to Affirm.*

But if the motion to dismiss should for any reason be denied, we feel well assured that this Court will not entertain for further argument a case in which the gist of the whole action is the recovery of damages from the judges of the Supreme Court of a State of this Union for the performance of an act done by them in their judicial capacity as such Supreme Court. If, as claimed by the plaintiff in error, the Supreme Court of Colorado was without jurisdiction of his alleged offence of making false and malicious charges against a member of the State Judiciary, by reason of the fact that those charges were contained in a paper filed by him as a solicitor in chancery of the Circuit Court of the United States, a plain remedy was open to him by writ of error from this Court, under Sec. 709 of the Revised Statutes, to reverse the judgment of disbarment. But the audacious course here

adopted of instituting a suit against the judges of the highest court of the State, on account of the alleged error or want of jurisdiction in their disbarment of the plaintiff in error is such an outrageous perversion of the civil rights act, under which it claims to be instituted, and attempted prostitution of the judicial machinery of the United States to the vile purpose of besmirching the honored characters of members of the State Judiciary, that we are satisfied this Court will not consent to retain it upon its docket for one moment after the nature of the case shall have been brought to its attention.

The case of *Randall* v. *Brigham*, 7 Wall. 523, was an attempt somewhat similar to the present on the part of a disbarred attorney to recover damages against the Judge of the Court disbarring him. The remarks of Mr. Justice Field, delivering the opinion of the Court, are highly instructive on the nature of the judicial office and the absolute necessity for the personal immunity of Judges from suits for acts done in their judicial capacity. The following extract, p. 536, sufficiently shows the bearing of the decision :

"Unless judges, in administering justice, are uninfluenced by considerations personal to themselves, they can afford little protection to the citizen in his person or property. And uninfluenced by such considerations they cannot be, if, whenever they err in judgment as to their jurisdiction, upon the nature and extent of which they are constantly required to pass, they may be subjected to prosecution at the instance of every party imagining himself aggrieved, and be called upon in a civil action in another tribunal, and perhaps before an inferior judge, to vindicate their acts.

"This exemption from civil action is for the sake of the public, and not merely for the protection of the judge. And it has been maintained by a uniform course of decisions in England for centuries, and in this country ever since its settlement."

And so, too, in *Bradley* v. *Fisher*, 13 Wall. 335, the same principle was fully maintained, the opinion being by the same justice. It was further held in the latter case that—

"Judges of courts of record of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." (Syllabus, p. 336.)

It matters not therefore in this case that the plaintiff's complaint is plentifully interlarded with such allegations as that the judges of the Supreme Court of Colorado "knowingly, unlawfully, wrongfully, fraudulently, and maliciously assumed and usurped pretended judicial power," etc. (p. 5), or that they proceeded "in the unlawful, wrongful, and most oppressive and tyrannical manner," "and with malice, and a corrupt partiality against plaintiff," "in gross violation of every principle of law and justice," "and with the intention and for the purpose of aiding, abetting, and assisting said defendants, Rogers, Marsh, and Joslin," or that (p. 6), "said judges of said Supreme Court colluded, confederated, and conspired with said Rogers, Marsh, and Joslin)," etc., etc., etc., *ad nauseam*; for, as was said in *Bradley* v. *Fisher*, 13 Wall. 348:

"If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. Few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the acts which would be essential to the maintenance of the action."

But it is hardly worth while to multiply authorities.

The idea that the civil rights legislation of Congress was ever intended for such a case as this is too ridiculous ever to have arisen, except in the brain of an enraged suitor, infuriated by disappointment and defeat.

It is hardly necessary to argue that if the suit cannot be sustained as against the Supreme Court judges, neither can it as against the other defendants. If the judges cannot be held to have "conspired," as alleged by the plaintiff, then there was no "conspiracy" and his case fails. Besides, the absurdity of attempting to apply the civil rights act to such a case is hardly greater against the judges of the Supreme Court than it is against the other defendants. They were merely seeking through the regularly appointed channels of justice the remedy which the judges of the Supreme Court awarded to them. For seeking that remedy they can no more be held liable than can the judges for giving it. Besides, if the action as against them is regarded as one for malicious prosecution, it fails in the all-essential ingredient in such cases, that the prosecution against the plaintiff must have been unsuccessful. *Wheeler* v. *Nesbitt*, 24 How. 544; *Stewart* v. *Sonneborn*, 98 U. S. 187.

In the present case the very burden of the complaint is that it was attended with success.

In every view of the case, therefore, if the motion to dismiss should be denied, and this Court should reach the merits of the case on the present motion, the judgment should be affirmed.

GEORGE A. KING,
Attorney for Defendants in Error.